REPORT

OF THE

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Pursuant to Chapter 54-35 of the North Dakota Century Code

SIXTY-FIFTH LEGISLATIVE ASSEMBLY
2017

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January 3, 2017

Honorable Douglas Burgum
Governor of North Dakota

Members, 65th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Management's report and recommendations of 23 interim committees and the Commission on Alternatives to Incarceration.

Major recommendations include reforming sentencing and the criminal justice system, providing alternatives for continuation of Medicaid Expansion, establishing a pilot program for providing state services to juveniles adjudicated in tribal court, completing a rewrite of agricultural laws, allowing the Director of the Game and Fish Department to consider applications for special allocation hunting licenses, clarifying one call excavation provisions, requiring a negotiation process before a water resource district may use quick take eminent domain, revising statutory references relating to married couples, continuing the wind turbine sales and use tax exemption, creating a nursing faculty loan forgiveness program, continuing minimum levels of funding under the higher education funding formula, continuing the higher education challenge grant program, expanding services and support for family caregivers, establishing requirements for hospital discharge policies, expanding behavioral health services, addressing clinical supervision requirements for behavioral health professionals, expanding the definition of addiction counseling, continuing of the practice of allowing political subdivisions to retain certain overweight vehicle fees, eliminating the angel fund investment tax credit, and repealing various income tax credits.

The report also discusses committee findings and numerous other pieces of recommended legislation. In addition, the report contains brief summaries of each committee report and of each recommended bill and resolution.

Respectfully submitted,

Senator Ray Holmberg
Chairman
North Dakota Legislative Management

RH/KS

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL

HISTORY OF THE LEGISLATIVE COUNCIL

The North Dakota Legislative Council was created in 1945 as the Legislative Research Committee (LRC). The LRC had a slow beginning during the first interim of its existence because, as reported in the first biennial report, the prevailing war conditions prevented the employment of a research director until April 1946.

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 legislative session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-54 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

NAME CHANGES

The name of the LRC was changed to the Legislative Council in 1969 to more accurately reflect the scope of its duties. Since 2009, Legislative Council refers specifically to the staff functioning as the legislative service agency, while Legislative Management refers to the oversight committee of legislators. Although research is still an integral part of the functioning of the Legislative Council, it has become a comprehensive nonpartisan legislative service agency with various duties in addition to research.

THE NEED FOR A LEGISLATIVE SERVICE AGENCY

Nearly all states have a legislative service agency. These agencies vary in staff size and functional responsibilities. Legislative service agencies provide legislators with the tools and resources that are essential if they are to fulfill the demands placed upon them. Prior to the creation of a legislative service agency, the Legislative Assembly had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

To meet these demands, the Legislative Assembly established the North Dakota Legislative Council. The existence of the Legislative Council has made it possible for the Legislative Assembly to meet the demands of today while remaining a part-time citizen legislature that meets for a limited number of days every other year.

LEGISLATIVE MANAGEMENT COMPOSITION

In 2009 the Legislative Assembly changed the name of the oversight committee for the Legislative Council to the Legislative Management. This committee by statute consists of 17 legislators, including the Majority and Minority Leaders of both houses, the Speaker of the House, and six senators and six representatives. In the House, the Majority Leader appoints four members and the Minority Leader appoints two members. In the Senate, the Majority Leader appoints four members and the Minority Leader appoints two members.

The Legislative Management is thus composed of 11 majority party members and 6 minority party members and is served by the Legislative Council staff of attorneys, accountants, and administrative support personnel who are hired and who serve on a strictly nonpartisan basis.

FUNCTIONS AND METHODS OF OPERATION OF THE LEGISLATIVE MANAGEMENT

Although the Legislative Management has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the work results from studies contained in resolutions and bills passed by both houses. The usual procedure is for the Legislative Management to designate interim committees to carry out the studies, although a few committees, including the Administrative Rules Committee, Employee Benefits Programs Committee, Energy Development and Transmission Committee, Information Technology Committee, Legislative Audit and Fiscal Review Committee, Tribal and State Relations Committee, Water Topics Overview Committee, and Workers' Compensation Review Committee are statutory committees with duties imposed by state law.

Regardless of the source of authority of interim committees, the Legislative Management appoints the members with the exception of a few members appointed as provided by statute. Nearly all committees consist entirely of legislators, although a few citizen members are sometimes selected to serve when it is determined they can provide special expertise or insight for a study, or if directed by the statute or bill.

The Legislative Management committees hold meetings throughout the interim at which members hear testimony; review information and materials provided by staff, other state agencies, and interested persons and organizations; and consider alternatives. Occasionally it is necessary for the Legislative Management to contract with consulting firms, universities, or outside professionals on specialized studies and projects. However, the vast majority of studies are handled entirely by the Legislative Council staff.

Committees make their reports to the full Legislative Management in November preceding a regular legislative session. All current legislators are invited to attend the November meeting as are those newly elected legislators. The Legislative Management may accept, amend, or reject a committee's report. The Legislative Management presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly.

In addition to conducting studies, the Legislative Council staff provides a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters and bill drafts to legislators and legislative committees. The Legislative Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Legislative Council reviews state agency rules and rulemaking procedures, legislative proposals affecting health and retirement programs for public employees, and information technology management of state agencies. The Legislative Council has on its staff the Legislative Budget Analyst and Auditor and a fiscal staff who provide technical assistance to Legislative Management committees and legislators, review audit reports for the Legislative Audit and Fiscal Review Committee, provide budget analysis, and assist the Legislative Assembly in developing the state's biennial budget. The Legislative Council provides information technology services to the legislative branch, including legislative publishing, bill drafting capabilities, and video recording of floor sessions. The Legislative Council makes arrangements for legislative sessions and controls the use of the legislative chambers and use of space in the legislative wing of the State Capitol. The Legislative Council also maintains a wide variety of materials and reference documents, many of which are not available from other sources.

MAJOR PAST PROJECTS OF THE LEGISLATIVE COUNCIL

Nearly every facet of state government and statutes has been touched by one or more Legislative Management studies since 1945. Statutory revisions, including the rewriting of agriculture laws, criminal laws, election laws, game and fish laws, insurance laws, motor vehicle laws, school laws, and weapons laws have been among the major accomplishments of interim committees. Another project was the republication of the North Dakota Revised Code of 1943, the resulting product being the North Dakota Century Code.

Government reorganization has also occupied a considerable amount of attention. Included have been studies of the delivery of human services, agriculturally related functions of state government, the creation of the Information Technology Department and the cabinet-level position of Chief Information Officer, the creation of the Department of Commerce, organization of the state's higher education system, and the creation of the Commission on Legal Counsel for Indigents, as well as studies of the feasibility of consolidating functions in state government. Unification of the state's judicial system and the establishment of a public venture capital corporation were also subjects of studies.

The review and updating of uniform and model acts, such as the Uniform Probate Code and the Uniform Commercial Code, have also been included in past Legislative Management agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures that have been approved by the voters.

Pioneering in new and untried areas is one major function of interim committees. The regulation and taxation of natural resources, including oil and gas in the 1950s and coal in the 1970s, have been the highlights of several interim studies. The closing of the constitutional institution of higher education at Ellendale also fell upon an interim committee after a fire destroyed one of the major buildings on that campus. The expansion of the University of North Dakota School of Medicine and Health Sciences is another area that has been the subject of several interim studies.

The Legislative Management has permitted the legislative branch to be on the cutting edge of technological innovation. North Dakota was one of the first states to have a computerized bill status system in 1969 and, beginning in 1989, the Legislator's Automated Work Station system has allowed legislators to access legislative documents at their desks in the House and Senate. All legislators receive laptop computers and an iPad to assist them in performing their legislative duties. During the 2009-10 interim, the Legislative Council staff worked with a consultant and the Information Technology Department to develop LEGEND, an updated legislative enterprise system that replaced the mainframe system. The new system is server-based and provides for enhanced bill drafting and session processing. Improvements to LEGEND have been made in the three interims since its implementation, including a web-based application. Since 1997, the Legislative Management has had the responsibility to study emerging technology and evaluate its impact on the state's system of information technology.

Perhaps of most value to citizen legislators are committees that permit legislators to keep up with rapidly changing developments in complex fields. Among these is the Budget Section, which receives the executive budget in December prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules. Other subjects that have been regularly studied include school finance, health care, property and oil taxes, and higher education.

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BRIEFLY - THIS REPORT SAYS

ADMINISTRATIVE RULES

It is the standing duty of the Legislative Management to review administrative rules adopted by administrative agencies. The Legislative Management reviewed all state administrative rulemaking actions from January 2015 through October 2016, covering 2,938 pages of rules and 2,108 rules sections. Both the number of sections reviewed and the number of pages of rules were substantially higher than the comparable amount from the previous biennial period. The Legislative Management voided a rule adopted by the Education Standards and Practices Board relating to educational requirements for special education majors. The Legislative Management also voided specific portions of rules adopted by the State Board of Dental Examiners relating to the authority of registered dental assistants to perform dental procedures and the level of supervision for registered dental assistants in a public health setting versus in a private dental setting.

The Legislative Management agreed on rules amendments of the Agriculture Commissioner, Attorney General, Game and Fish Department, State Department of Health, Department of Transportation, Highway Patrol, Industrial Commission, Insurance Commissioner, Superintendent of Public Instruction, Public Service Commission, Racing Commission, Retirement Board, Secretary of State, Department of Human Services, Tax Commissioner, State Water Commission, Workforce Safety and Insurance, and Gaming Commission, as well as numerous boards and commissions.

AGRICULTURE AND NATURAL RESOURCES

The Legislative Management studied North Dakota Century Code provisions that relate to agriculture, for the purposes of eliminating those provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. The Legislative Management recommends Senate Bill No. 2026 to rewrite the laws pertaining to the general administration authority of the Agriculture Commissioner and other agricultural entities and to redesignate various chapters throughout Title 4.1, Senate Bill No. 2027 to rewrite the laws pertaining to fertilizers and pesticides, Senate Bill No. 2028 to rewrite the laws pertaining to livestock and other animals, and Senate Bill No. 2029 to rewrite the laws pertaining to plants and trees.

The Legislative Management studied the Game and Fish Department's special allocation hunting licenses provided to entities for the purpose of fundraising. The Legislative Management recommends House Bill No. 1025 to allow the Director of the department to receive and consider applications for a limited number of special allocation hunting licenses in addition to a number of statutorily authorized special allocation licenses.

The Legislative Management received a report from the State Board of Agricultural Research and Education regarding its annual evaluation of research and expenditures in accordance with Section 4-05.1-19.

BUDGET SECTION

The Legislative Management received reports from the Office of Management and Budget on the status of the general fund, employee bonuses, irregularities in the fiscal practices of the state, the capital improvements preliminary planning revolving fund, tobacco settlement proceeds, 2015-17 biennium budget form changes, federal grant applications, Attorney General's office salary savings, and State Board of Higher Education reporting requirement changes and capital projects variance reports.

The Legislative Management authorized the expenditure of additional other funds for capital projects, as well as changes in the scope of capital projects at Williston State College. The Legislative Management received reports from the North Dakota University System regarding local funds, North Dakota State University regarding the status of the Minard Hall project, North Dakota State University Main Research Center regarding its flooded lands study, Williston State College regarding the Community Wellness Center project, and Dickinson State University regarding the Theodore Roosevelt Presidential Library project.

The Legislative Management received reports from the State Board of Agricultural Research and Education on the status of its activities and the North Dakota Agricultural Experiment Station and the North Dakota State University Extension Service budgets; the Department of Commerce on the Centers of Excellence and Centers of Research Excellence audit and monitoring reports, renaissance fund organizations annual audits, long-term care grants, and the experimental program to stimulate competitive research and research North Dakota; the Information Technology Department's 2014-15 and 2015-16 annual reports and the desktop support study results; the Department of Human Services on transfers in excess of $50,000 and on the status of the Medicaid management information system; the Housing Finance Agency regarding flood-impacted housing assistance and housing units owned or master leased for essential service workers; and the Department of Transportation regarding the use of one-time funding provided by the 2015 Legislative Assembly.

The Legislative Management approved two land acquisition requests from the Game and Fish Department; a contingency funding request from the Veterans' Affairs for its service dog program; and 17 of 19 agency requests for increased spending authority, transfers of spending authority, and expenditures from the state contingencies appropriation, which were forwarded from the Emergency Commission.

The Legislative Management received reports from the Department of Trust Lands regarding state agency unclaimed property; Job Service North Dakota regarding the status of the job insurance trust fund; the Legacy and Budget Stabilization Fund Advisory Board regarding its activities; the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years; the Secretary of State regarding credit card usage and fees; the Department of Corrections and Rehabilitation regarding its inmate report; hub city reports regarding the use of funding received from allocations from oil and gas gross production tax; the Industrial Commission regarding the abandoned oil and gas well plugging and site reclamation fund; the North Dakota Outdoor Heritage Advisory Board regarding its activities; the State Fire Marshal regarding expenditures by certified fire departments, district funds received from the insurance tax distribution fund, and reserve fund balances; and the Three Affiliated Tribes of the Fort Berthold Reservation regarding investment of oil and gas tax receipts.

The Legislative Management recommends Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds during the 2017-19 interim.

ECONOMIC IMPACT

The Legislative Management studied the state's development of a civilian ground center, including consideration of potential privacy issues concerning unmanned aircraft systems use and the collection of data; cybersecurity and high-performance computing associated with a significant increase in data gathering, storage, and analysis; and recent developments in unmanned aircraft systems applications, technology, and regulation.

The Legislative Management studied the one-call excavation notice system, including consideration of the financial and operational impact on the underground facilities owners from the tremendous increase in the number of locates, whom should be responsible for the expenses associated with locating underground facilities in certain situations, and the appropriateness of penalties and the enforcement of penalties by the appropriate state agencies. The Legislative Management recommends House Bill No. 1026 to clarify the definition of "locate period," increase membership of the One-Call Notification Center Board from eight to nine members, identify the size of a locate area, address the assignment of costs of locating underground facilities, and clarify liability provisions relating to damage of underground facilities.

The Legislative Management studied providing natural gas services to underserved communities in North Dakota from available natural gas not otherwise committed in main gas transmission lines near those underserved communities.

The Legislative Management accepted reports regarding the status of the program to establish and administer an unmanned aircraft systems test site, the use of the assessed communications services fee revenue, and recommended changes to the operating standards for emergency services communications and training or certification standards for dispatchers.

The Legislative Management recommends House Bill No. 1027 to address the transition to Next Generation 9-1-1, align standards for public safety communicators with federal requirements in related standards, and align billing practices with modern 9-1-1 database provisioning practices.

EDUCATION

The Legislative Management studied North Dakota content standards and assessments, including a review of the content standards applicable to all grade levels in this state in the areas of English language arts and mathematics, a comparison of the content standards of this state to those of other states recognized as having high-academic achievement levels, and a review of the standards development process.

The Legislative Management studied the nature and scope of career and technical education opportunities available to students in the state, the manner in which such opportunities are financially supported, and the manner in which such opportunities are monitored to ensure that they provide students with 21st century technical skills that are aligned to industry standards, in addition to providing appropriate academic foundations.

The Legislative Management studied the use of restraint and seclusion procedures in schools, including a review of federal and state laws relating to the use of restraint and seclusion.

The Legislative Management recommends Senate Bill No. 2030 to make technical corrections in Century Code to change references from the North Dakota Education Association to North Dakota United after being informed that the North Dakota Education Association merged with the North Dakota Public Employees Association to form North Dakota United.

The Legislative Management received reports regarding the financial condition of school districts; school district employee compensation; requests from schools or school districts for waivers of rules governing the accreditation of schools; requests from schools or school districts for a waiver of Section 15.1-21-03 regarding high school unit instructional time; test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide; findings and recommendations of the School District Reporting Review Committee; implementation of a uniform system for the accounting, budgeting, and reporting of data by an early childhood education provider that received a grant; electronic satisfaction survey results of all interactions with individuals seeking information or services from the Education Standards and Practices Board; the capabilities of the Center for Distance Education; and the teacher of the year award.

EMPLOYEE BENEFITS PROGRAMS

The Legislative Management solicited and reviewed multiple proposals affecting retirement and health programs for public employees and obtained actuarial and fiscal information on each of these proposals. The Legislative Management received and reviewed the annual actuarial reports for the Teachers' Fund for Retirement and the Public Employees Retirement System. The Legislative Management received periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to recruit or maintain employees in hard-to-fill positions. The Legislative Management received a report from Human Resource Management Services on service awards, employer-paid cost of training or educational courses, and employer-paid professional organization membership and service club dues for individuals.

ENERGY DEVELOPMENT AND TRANSMISSION

The Legislative Management studied the impact of a comprehensive energy policy for the state pursuant to its statutory responsibility. The Legislative Management also studied the oil and gas tax revenue allocation formulas and the impacts and costs of the federal Environmental Protection Agency regulations of carbon dioxide emissions from new and existing electrical generation units. The committee received reports regarding the Energy Policy Commission's policy recommendations, the North Dakota Transmission Authority's activities, the North Dakota Pipeline Authority's activities, gathering pipeline recommendations, water management practices, and retail electricity sales meeting or exceeding the state renewable and recycled energy objective.

The Legislative Management recommends House Bill No. 1028, which removes expiration dates to continue the sales and use tax exemptions for materials used in the construction of wind turbines.

The Legislative Management recommends Senate Bill No. 2031, which removes an expiration date to continue the 5 percent allocation of the general fund share of coal conversion tax revenue collections to the lignite research fund.

GOVERNMENT FINANCE

The Legislative Management studied the statutory and regulatory requirements placed on state government agencies by United States government agencies as a condition of the receipt of federal funding. The Legislative Management recommends House Bill No. 1029 to require state agencies to perform an analysis before applying for or accepting federal funds and to continue the study of statutory and regulatory requirements placed on state agencies by United States government agencies.

The Legislative Management studied the functions of the Budget Section. The Legislative Management recommends:

- House Bill No. 1030 to increase the minimum cost of higher education campus improvements, which require the consent of the Legislative Assembly or the Budget Section from $385,000 to $700,000 and to remove the authority of the Budget Section to approve the construction of any new building or any addition to a building under the control of the State Board of Higher Education.
- Senate Bill No. 2032 to remove or amend certain Budget Section reporting requirements.
- House Bill No. 1031 to remove the authority of the Budget Section to authorize the purchase or lease of an aircraft by a state agency or other entity of state government.

The Legislative Management reviewed state budget information, including monitoring the status of revenues and appropriations, reviewing the 2015-17 biennium revised and preliminary 2017-19 biennium revenue forecasts, and receiving updates on potential major budget issues for the 2017-19 biennium.

HEALTH CARE REFORM REVIEW

The Legislative Management studied the proposed and final federal rules issued by the federal Health and Human Services Department relating to the essential health benefits under the federal Affordable Care Act for plan years 2017 and beyond; the needs and challenges of the North Dakota health care delivery system, including monitoring the implementation of the Affordable Care Act and examining Medicaid Expansion and Medicaid reform and receiving a report from the University of North Dakota School of Medicine and Health Sciences Advisory Council on the status of its biennial report; and state contributions for state employee health insurance premiums, including the feasibility and desirability of establishing a maximum state contribution for state employee health insurance premiums and the effect of losing the state's grandfathered status under the Affordable Care Act.

The Legislative Management recommends House Bill No. 1032 to remove the July 31, 2017, sunset for the Medicaid Expansion program; provide Medicaid Expansion provider reimbursement rates are the same as the provider reimbursement rates set for traditional Medicaid; and remove the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange.

The Legislative Management recommends House Bill No. 1033 to remove the July 31, 2017, sunset for the Medicaid Expansion program; remove the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange; direct the Department of Human Services to pursue a federal Medicaid waiver to allow the department to implement premium cost-sharing for individuals enrolled in Medicaid Expansion if the cost-sharing program does not have a negative fiscal effect for the state; and direct the department to pursue care coordination agreements to increase federal reimbursement for Medicaid-eligible American Indians.

The Legislative Management recommends House Bill No. 1034 to remove the July 31, 2017, sunset for the Medicaid Expansion program; remove the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange; provide if the Department of Human Services contracts with a private carrier, the contract must provide the department with full access to provider reimbursement rates and the department is directed to consider these rates in selecting a private carrier; and direct the department to report to the Legislative Management regarding provider reimbursement rates under the Medicaid Expansion program.

HEALTH SERVICES

The Legislative Management studied dental services in the state. The Legislative Management recommends House Bill No. 1035 to change the dental loan repayment program to provide for a prorated payback of loan repayment funds if a dentist breaches the loan repayment contract.

The Legislative Management studied medicolegal death investigation in the state and the feasibility and desirability of the University of North Dakota acquiring the building that houses the Forensic Pathology Center. The Legislative Management also studied issues relating to employment restrictions in public assistance programs.

The Legislative Management received reports from the Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, State Board of Psychologist Examiners, State Board of Medical Examiners, and North Dakota Marriage and Family Therapy Licensure Board regarding plans for administration and implementation of licensing and reciprocity standards for licensees and any legislative changes necessary to implement those plans and from the Board of Addiction Counseling Examiners regarding the status of the periodic evaluation of the initial licensure coursework requirements and clinical training requirements. The Legislative Management recommends Senate Bill No. 2033 to provide for clinical supervision of behavioral health professionals by behavioral health professionals outside of their respective professions and to provide for a report to the Legislative Management.

The Legislative Management received a report from a health care workforce task force regarding nursing workforce capacity, including behavioral health nurses, nursing faculty recruitment and retention, and the need for advanced practice registered nurse preceptors. The Legislative Management recommends Senate Bill No. 2034 to establish a loan forgiveness program for nursing faculty.

The Legislative Management received a report from the Insurance Commissioner regarding cost-benefit analyses for bills mandating health insurance coverage during the prior legislative sessions. The Legislative Management accepted the Insurance Commissioner's recommendation to contract with Acumen, LLC to conduct cost-benefit analyses during the 2017 legislative session.

The Legislative Management also received reports from the State Fire Marshal regarding a review of the effectiveness of test methods and performance standards for cigarettes and any findings and recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes; the Department of Human Services, State Department of Health, Indian Affairs Commission, and the Public Employees

Retirement System regarding goals and strategies to reduce diabetes in the state, including individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes; the State Department of Health regarding a study of state programs to assist health professionals and regarding progress made toward improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment and any recommendations for future legislation; and the Tobacco Prevention and Control Advisory Committee and the State Department of Health regarding grant expenditures, the granting process, and reporting requirements of a $500,000 grant from the tobacco prevention and control trust fund to the State Department of Health.

HIGHER EDUCATION

The Legislative Management studied issues affecting higher education, including funding methods, course delivery methods, institution missions, administrative costs, and higher education governance. The Legislative Management recommends:

- House Bill No. 1036 to repeal the student financial assistance grant advisory board.
- Senate Bill No. 2035 to remove the expiration date relating to a minimum amount payable to an institution through the higher education funding formula.
- Senate Bill No. 2036 to continue the higher education challenge grant program.
- House Bill No. 1037 to require local school districts to use the E-Transcripts system.
- Senate Bill No. 2037 to increase the teacher shortage loan forgiveness program award amount to $1,500 per year.

The Legislative Management received reports from the University of North Dakota School of Medicine and Health Sciences regarding the strategic plans, programs, and facilities of the School of Medicine and Health Sciences and from tribally controlled community colleges receiving a grant under Chapter 15-70 regarding the enrollment of students for which grant funding was received. The Legislative Management also received reports from the State Board of Higher Education regarding North Dakota academic and career and technical education scholarships; the development of a unified workforce, vocational, and technical education program; distributions from systemwide deferred maintenance, campus security, internal audit funding pools, and the use of extraordinary repairs funding and related matching funds; the operations and financial condition of Dickinson State University; the status of the implementation of student and student organization disciplinary proceedings uniform procedures; and policies, procedures, supports, and services available at public higher education institutions relating to sexual assault and related incidents.

HUMAN SERVICES

The Legislative Management studied family caregiver supports and services. The Legislative Management recommends:

- House Bill No. 1038 to appropriate $197,580 from the general fund to the North Dakota State University Extension Service for a pilot project to expand local training programs to include family caregiver training, $200,000 of federal funds to the Department of Human Services to administer the Lifespan Respite Care Program, and $1,535,000 from the general fund to the Department of Human Services for an inflationary adjustment to the service payments for the elderly and disabled sliding fee schedule. The bill also directs the Department of Human Services to establish a caregiver resource center website, to review long-term care services, and to provide recommendations to the Legislative Management of options to expand home- and community-based services.
- House Bill No. 1039 to require hospitals to establish and maintain written discharge policies.

The Legislative Management studied behavioral health needs. The Legislative Management recommends:

- Senate Bill No. 2038 to:

  Extend the holding period from 24 hours to 72 hours for emergency involuntary commitments for individuals with a serious physical condition or illness;

  Change youth mental health training requirements for teachers, paraprofessionals, and administrators in school districts;

  Require behavioral health training for early childhood service providers; and

  Create a children's behavioral health task force.

- House Bill No. 1040 to appropriate:

  $10,000 from the general fund and require the Department of Human Services to adopt rules for an evidence-based alcohol and drug education program for certain individuals;

  $1,956,000 from the general fund to the Department of Human Services for children's prevention and early intervention behavioral health services;

  $70,000 from the general fund to the Department of Human Services for a behavioral health database;

  $1,920,000 from the general fund to the Department of Human Services for peer-to-peer and family-to-family support services;

  $24,393,668, of which $12,196,834 is from the general fund to the Department of Human Services for targeted case management services for individuals with severe mental illness and severe emotional disturbance.

- Senate Bill No. 2039 to:

  Change behavioral health definitions;

  Change administration of behavioral health programs in the Department of Human Services;

  Change the licensure process for regional human service centers;

  Add crisis services to the continuum of services for individuals with serious and persistent mental illness;

  Change membership and role of advisory groups for human service centers;

  Allow designated behavioral health providers to furnish preventive diagnostic, therapeutic, rehabilitative, or palliative services to individuals eligible for medical assistance; and

  Remove the designated location of a second state hospital for the mentally ill.

- Senate Bill No. 2040 to expand the definition of addiction counseling.
- Senate Concurrent Resolution No. 4002 to amend the Constitution of North Dakota to remove provisions requiring a state hospital to be located in Jamestown.

The Legislative Management received reports regarding the Autism Spectrum Disorder Task Force, autism spectrum disorder voucher program pilot project, children's health insurance program, Medicaid Expansion, brain injury life skill services, developmental disabilities, developmental disability waiver eligibility, family control parent-to-parent support, family-to-family health information and education, adult protective services, behavioral health services, addiction treatment services voucher, and statutory references to mental health professionals. The Legislative Management recommends:

- Senate Bill No. 2041 to add Down syndrome to the definition of developmental disability for determining eligibility assistance.
- Senate Bill No. 2042 to change statutory references for mental health professionals to a tiered system.

INCARCERATION ISSUES COMMITTEE AND COMMISSION ON ALTERNATIVES TO INCARCERATION

The Legislative Management studied pretrial services, sentencing alternatives, treatment options, and other related issues. The Legislative Management also studied justice reinvestment reforms to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations.

The Legislative Management recommends House Bill No. 1041 to shift the authority to allow sentence reduction credit from the judiciary to the correctional facility; authorize the use of sentence reduction credit for time spent in custody; allow the parole board to consider medical parole for offenders who are not otherwise eligible for parole; require the use of presumptive probation for individuals convicted of Class A misdemeanor drug offenses; reclassify ingestion, possession, and paraphernalia offenses to a lower-level criminal offense; reduce the proximity to a school before an increased penalty for a drug offense is warranted; authorize additional mental health professionals to provide addiction counseling services; remove the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and create a pilot project for pretrial services.

The Legislative Management recommends House Bill No. 1042 to shift the authority to allow sentence reduction credit from the judiciary to the correctional facility; authorize the use of sentence reduction credit for time spent in

custody; allow the parole board to consider medical parole for offenders who are not otherwise eligible for parole; reclassify ingestion, possession, and paraphernalia offenses to a lower-level criminal offense; reduce the proximity to a school before an increased penalty for a drug offense is warranted; authorize additional mental health professionals to provide addiction counseling services; remove the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and create a pilot project for pretrial services.

INFORMATION TECHNOLOGY

The Legislative Management received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the department's business plan and annual report, the implementation of desktop support services, large information technology projects, prioritization of computer software projects for the 2017-19 biennium, elementary and secondary information technology initiatives, health information technology activities, the State Radio interoperability network initiative, and the audit of the state's network. The Legislative Management also received reports from representatives of the University System regarding higher education information technology projects and services.

JUDICIARY

The Legislative Management studied the registration requirements for offenders against children and sex offenders under Section 12.1-32-15.

The Legislative Management studied voter registration and policies to implement a system of voter registration, including provisions necessary to allow same-day voter registration. The Legislative Management also studied issues relating to verification of citizenship status for the purpose of voting, including absentee and mail ballot voting.

The Legislative Management reviewed North Dakota statutes that may be in conflict with the definition of marriage ruling from the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. (2015). The Legislative Management recommends Senate Bill No. 2043 to update Century Code references from "husband or wife" to "two individuals married to each other" or "husband" or "wife" to "spouse."

The Legislative Management reviewed uniform Acts recommended by the North Dakota Commission on Uniform State Laws.

The Legislative Management recommends House Bill No. 1043 to make technical corrections throughout Century Code.

The Legislative Management reviewed executive orders used by the President of the United States, which had not been affirmed by a vote of the Congress and signed into law, to determine whether to recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President.

The Legislative Management received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts, an annual report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices, a biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering, a report from the North Dakota Lottery regarding the operation of the lottery, a report from the Department of Human Services regarding services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the Executive Director of the Department of Human Services, a report from the Task Force on Substance Exposed Newborns, and a report from the Department of Human Services regarding the number of revoked obligor driver's licenses.

LEGISLATIVE AUDIT AND FISCAL REVIEW

The Legislative Management received and accepted 180 audit reports by the State Auditor's office and public accounting firms. Among the audit reports accepted was a performance audit and evaluation relating to the use of tuition waivers and student stipends at higher education institutions and performance audits and evaluations of the Department of Trust Lands' Energy Infrastructure and Impact Office, trust assets and department resources, and unclaimed property function.

The Legislative Management received the University System's technology security audit and vulnerability assessment, North Dakota information technology security audit vulnerability assessment and penetration testing, and the Information Technology Department service organization audit.

The Legislative Management received information regarding the accounts receivable writeoffs of the Department of Human Services, electronic viewing of audit reports, other state's nonresidential tuition rates, the City of Lignite Fire Department water sales, North Dakota State University student enrollment increase projections, Dickinson State University plans to improve operations and financial stability, and the examination report of the Bank of North Dakota.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS

The Legislative Management approved arrangements for the 2017 legislative session. The Legislative Management approved various legislative space renovations, including renovation of the legislative media room (previously called the press studio) and upgrades of committee room audio and visual equipment. The Legislative Management monitored the progress of the renovation of three new legislative committee rooms in the judicial wing and received updates and proposals regarding other upgrades in the legislative wing.

The Legislative Management recommends amendment of legislative rules to remove the requirement that the Secretary of the Senate and the Chief Clerk of the House deposit with the Secretary of State all books, bills, documents, resolutions, and papers in their possession; change the numbers of various Senate and House employees to reflect the number of employees approved by the committee for the 2017 legislative session; require roll call votes on all divisions of bills; and remove contested resolutions from the list of items that may be placed on the consent calendar.

The Legislative Management recommended adjustments in legislative compensation for the 2017-19 biennium.

The Legislative Management approved the selection and purchase of new laptop computers and iPads for members of the Legislative Assembly.

The Legislative Management approved state participation in Phase I of the 2020 Census Redistricting Data Program.

POLITICAL SUBDIVISION TAXATION

The Legislative Management studied economic development tax incentives. The Legislative Management recommends:

- House Bill No. 1044 to provide a uniform definition of "primary sector business."
- House Bill No. 1045 to sunset the availability of the angel fund investment tax credit for investments made after December 31, 2017, and increase allowable credit amounts and carryforward periods related to the seed capital investment tax credit.
- House Bill No. 1046 to eliminate the sunset date attached to the telecommunications infrastructure sales tax exemption.
- House Bill No. 1047 to eliminate the sunset date attached to the manufacturing automation equipment income tax credit.
- House Bill No. 1048 to repeal the certified nonprofit development corporation income tax credit.
- House Bill No. 1049 to repeal the wage and salary income tax credit.
- House Bill No. 1050 to repeal the microbusiness income tax credit.
- Senate Bill No. 2044 relating to the acquisition of software necessary to prepare dynamic fiscal impact statements for economic development tax incentives selected for review during the 2017-18 interim. The bill provides an appropriation of up to $165,000 to acquire the necessary software.

The Legislative Management accepted two reports from the Department of Commerce regarding renaissance zone progress and cities that have renaissance zone property included in a tax increment financing district.

The Legislative Management studied transferring the costs of operating social services programs from county property tax levies to general fund appropriations and the development of a funding formula to adequately account for county expenditures.

The Legislative Management studied the application of sales and use tax to purchases made by a contractor on behalf of an exempt entity.

The Legislative Management studied the income tax reciprocity agreement between North Dakota and Montana.

TAXATION

The Legislative Management studied the oil extraction tax exemption available for incremental production from a tertiary recovery project that uses carbon dioxide (CO_2) and considered the potential benefits and costs to industry, the state, and the environment of using CO_2 enhanced recovery methods. The Legislative Management also studied scientific and economic information pertaining to oil and gas recovery and enhanced recovery techniques, including the use of CO_2, the timeline for implementing the techniques, and the estimated future annual economic impact, to evaluate existing and alternative tax incentives and recommend tax incentives that under current and foreseeable conditions, and within different oil formations, would best serve the interest of the state, political subdivisions, and fossil fuel energy production industries.

The Legislative Management accepted a report from the Tax Commissioner compiling reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended.

The Legislative Management also accepted a report from the Department of Commerce compiling and summarizing annual state grantor reports and reports of state agencies that awarded business incentives for the previous calendar year.

TRANSPORTATION

The Transportation Committee studied the truck permitting systems in oil- and gas-producing counties.

The Legislative Management recommends Senate Bill No. 2045 to continue the deposit of certain overweight violation fees with the jurisdiction of the road in which the violation occurred rather than the state highway fund.

The Transportation Committee studied the truck size and weight provisions to determine if the state may harmonize its truck size and weight regulations with the regulations of the states in the Western States Transportation Alliance, required motor vehicle insurance, and special transportation funding distributions to political subdivisions.

The Transportation Committee studied the feasibility of placing the Upper Great Plains Transportation Institute under the administrative authority of the Department of Transportation.

The Transportation Committee received reports from the Upper Great Plains Transportation Institute regarding its infrastructure needs report and reports from the Department of Transportation regarding information collected from transportation network companies, the department's study of state funding distributions and allocations to public transportation providers, the state rail plan, and the status of its budget and state highway projects.

TRIBAL AND STATE RELATIONS

The Legislative Management conducted joint meetings with the North Dakota Tribal Governments Task Force. The Legislative Management studied the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts. The Legislative Management recommends Senate Bill No. 2046 to establish a pilot program for providing state services to juveniles adjudicated in tribal court. The bill directs the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws.

The Legislative Management also studied tribal-state tax agreements; Indian education issues, including Department of Public Instruction projects, the tribal college grant program, and tribal college research activities; and tribal health and human services issues, including Medicare and Medicaid Expansion, tribal dental services, and child support issues. The Legislative Management received a report from the Task Force on Substance Exposed Newborns and a report on the activities of the North Dakota Tribal State Health Service Committee.

The Legislative Management received updates from Supreme Court committees that address tribal and state court issues. The Legislative Management received information regarding a paleontology project on the Standing Rock Sioux Reservation, the tribal recruiting and retention efforts of the North Dakota National Guard, the services of the State Fire Marshal, the state's animal cruelty laws and the availability of free veterinary services, and the status of the Environmental Protection Agency's Clean Power Plan.

The Legislative Management received the biennial report on the implementation of the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation.

WATER TOPICS OVERVIEW

The Legislative Management studied the use of quick take eminent domain by water resource districts, and the impact on owners of land inundated by rising levels of Devils Lake and Stump Lake. The Legislative Management monitored the status of the Garrison Diversion Conservancy District and Red River Valley Water Supply Project, the Fargo Flood Control and FM Area Diversion Project, and received reports and information on flood control projects, water project funding and prioritization, regionalization of water supply projects, the Western Area Water Supply Authority, the Southwest Water Authority, the Northwest Area Water Supply project, and other water-related topics. The Legislative Management held two joint meetings with the State Water Commission and discussed further collaboration between the two entities. The Legislative Management recommends Senate Bill No. 2047 to provide a specific negotiation process for the use of quick take eminent domain by water resource districts.

WORKERS' COMPENSATION REVIEW

The Legislative Management fulfilled its statutory duties and reviewed the workers' compensation case of seven injured employees to determine whether changes should be made to the state's workers' compensation laws, received status reports on any actions resulting from the 2014 Workforce Safety and Insurance performance evaluation report, and received annual reports from Workforce Safety and Insurance, which include reports on pilot programs to assess alternative methods of providing rehabilitation services.

The committee received a report from Workforce Safety and Insurance on whether there is an industry interest in using safety programs to provide grants to an industry association to provide alcohol server training to employees of bars and restaurants that serve alcohol and received a biennial report from Workforce Safety and Insurance regarding compiled data relating to safety grants issued under Chapter 65-03.

The Legislative Management recommends Senate Bill No. 2048 to direct Workforce Safety and Insurance to pay an injured employee's attorney's fees on appeal when the employee prevails, regardless of whether Workforce Safety and Insurance ultimately prevails on further appeal. The bill limits Workforce Safety and Insurance's payment of attorney's fees to the level of appeal at which the injured employee prevailed.

ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, 28-32-17, 28-32-18, and 28-32-18.1. The committee is required to review administrative agency rules to determine whether:

- Administrative agencies are properly implementing legislative purpose and intent.
- There is dissatisfaction with administrative rules or statutes relating to administrative rules.
- There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Management the amendment or repeal of the statutory authority for the rule. The committee also may find a rule void or agree with an agency to amend or repeal an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

The Legislative Management delegated to the committee its authority under NDCC Section 28-32-10, to distribute administrative agency notices of proposed rulemaking and to establish standard procedures for agency compliance with notice requirements, its authority under NDCC Section 28-32-07 to approve extensions of time for administrative agencies to adopt rules, and its responsibility under NDCC Section 28-32-42 to receive notice of appeal of an administrative agency's rulemaking action.

The committee is authorized under NDCC Sections 54-06-32 and 54-06-33, to approve rules adopted by Human Resource Management Services authorizing service awards and employer-paid costs of training to employees in the classified service.

Committee members were Representatives Bill Devlin (Chairman), Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Kim Koppelman, Scott Louser, Gail Mooney, Mike Schatz, Mary Schneider, Peter F. Silbernagel, Gary R. Sukut, Blair Thoreson, Nathan Toman, and Robin Weisz and Senators Kelly M. Armstrong, Kyle R. Davison, Jerry Klein, and Connie Triplett.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). A rule is an agency's statement of general applicability that implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law. Each rule adopted by an administrative agency must be filed with the Legislative Council office for publication in the North Dakota Administrative Code (NDAC).

Under NDCC Section 54-35-02.6, it is the standing duty of the Administrative Rules Committee to review administrative rules adopted under NDCC Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to address:

- Whether the rules resulted from statutory changes made by the Legislative Assembly.
- Whether the rules are related to any federal statute or regulation. If so, the agency is requested to indicate whether the rules are mandated by federal law or to explain any options the agency had in adopting the rules.
- A description of the rulemaking procedure followed in adopting the rules, e.g., the time and method of public notice and the extent of public hearings on the rules.
- Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to the rules. Each agency is asked to describe any such concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint and to summarize the comments of any person who offered comments at the public hearings on these rules.
- The approximate cost of giving public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
- The subject matter of the rules and the reasons for adopting the rules.

- Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rules are expected to have an impact on the regulated community in excess of $50,000, and whether a regulatory analysis was issued. If a regulatory analysis was prepared, a copy is to be provided to the committee.
- Whether a regulatory analysis or small entity economic impact statement was prepared as required by NDCC Section 28-32-08.1. If a small entity impact assessment was prepared, a copy is to be provided to the committee.
- Whether the rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by the agency. Copies of any fiscal note are to be provided to the committee.
- Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a constitutional takings assessment was prepared, a copy is to be provided to the committee.
- If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency is to provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and a copy of the Governor's approval of the emergency status of the rules.

During committee review of the rules, agency testimony is required and any interested party may submit oral or written comments. If no representative of the agency appears before the committee to provide testimony, the rules are required by statute to be carried over for consideration and may be delayed in taking effect until a representative of the agency appears before the committee.

CURRENT RULEMAKING STATISTICS

The committee reviewed 2,108 rules sections and 2,938 pages of rules that were changed from January 2015 through October 2016. Both the number of sections reviewed and the number of pages of rules were substantially higher than the comparable amount from the previous biennial period. Table A at the end of this report shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of NDAC sections amended, repealed, created, superseded, reserved, or redesignated during designated time periods:

Time Period	Number of Sections
November 1986-October 1988	2,681
November 1988-October 1990	2,325
November 1990-October 1992	3,079
November 1992-October 1994	3,235
November 1994-October 1996	2,762
November 1996-October 1998	2,789
November 1998-November 2000	2,074
December 2000-November 2002	1,417
December 2002-November 2004	2,306
December 2004-October 2006	1,353
January 2007-October 2008	1,194
January 2009-October 2010	1,451
January 2011-October 2012	907
January 2013-October 2014	1,383
January 2015-October 2016	2,108

For committee review of rules at each meeting, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, with changes indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during designated time periods:

Time Period	Supplement Pages
November 1992-October 1994	3,809
November 1994-October 1996	3,140
November 1996-October 1998	4,123
November 1998-November 2000	1,947
December 2000-November 2002	2,016
December 2002-November 2004	4,085
December 2004-October 2006	1,920
January 2007-October 2008	1,663

Time Period	Supplement Pages
January 2009-October 2010	2,011
January 2011-October 2012	2,399
January 2013-October 2014	2,116
January 2015-October 2016	2,938

Rule Review Schedule

Since September 2005, NDAC supplements have been published on a calendar quarter basis. The current deadlines and effective dates are as follows:

Filing Date	Committee Meeting Deadline	Effective Date
August 2-November 1	December 15	January 1
November 2-February 1	March 15	April 1
February 2-May 1	June 15	July 1
May 2-August 1	September 15	October 1

COMMITTEE ACTION ON RULES REVIEWED

Repealing Obsolete Rules

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal notice and hearing requirements relating to adoption of administrative rules if the agency initiates the request to the committee, the agency provides notice to the regulated community of the time and place the committee will consider the request, and the agency and the Administrative Rules Committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community.

Voiding or Carrying Over Rules

Under NDCC Section 28-32-18, the committee may void all or part of a rule if that rule is initially considered by the committee no later than the 15th day of the month before the date of the NDAC supplement in which the rule change appears. The committee may carry over consideration of voiding administrative rules for not more than one additional meeting. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to provide information or to work with affected groups to develop mutually satisfactory rules. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

- An absence of statutory authority;
- An emergency relating to public health, safety, or welfare;
- A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
- A conflict with state law;
- Arbitrariness and capriciousness; or
- A failure to make a written record of an agency's consideration of written and oral submissions respecting the rule under NDCC Section 28-32-11.

Within 3 business days after the committee finds a rule void, the Legislative Council office is required to provide written notice to the adopting agency and the Chairman of the Legislative Management. Within 14 days after receipt of the notice, the agency may file a petition with the Chairman of the Legislative Management for Legislative Management review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency, the Legislative Management has not disapproved the finding of the committee, the rule is void.

Obsolete Rules Repealed by Committee

The committee approved a request by the Public Employees Retirement System for the repeal of administrative rules regarding the retiree health insurance credit, which were superseded by 2013 legislation.

The committee approved a request from the Secretary of State for the repeal of rules governing a computerized central indexing system that was replaced by the implementation of an updated electronic filing system.

The committee approved two requests from the State Department of Health for the repeal of obsolete administrative rules. The first request related to loan repayment programs rules for various medical professionals, which were superseded by 2015 legislation that established the medical personnel loans repayment program and the physician loan repayment program. The second request related to hazardous waste rules that were obsolete due to a clarification of federal regulations.

Rules Carried Over or Amended by Committee Approval

The committee carried over consideration of a rule of the State Department of Health relating to the release to the department of the name of a resident in basic care who elects to receive hospice care. The committee agreed with the department on an amendment that only would require the basic care facility to notify the department that a resident has elected to receive hospice care.

The committee carried over for consideration a rule of the Real Estate Commission relating to abandoned trust account money. The committee agreed with the Real Estate Commission on an amendment to clarify that earnest money deposits are considered payable or distributable as of the closing date of the purchase agreement.

The committee agreed with the Aeronautics Commission that for consistency throughout the commission's rules, the word "airplane" should be changed to "aircraft" in one section of the commission's adopted rules.

The committee agreed with the Department of Human Services that changing the term "clinical psychologist" to "psychologist" in several rules more accurately identifies the professional authorized to supervise an individual person-centered treatment plan.

The committee carried over consideration of a rule of the State Department of Health because of concerns that requiring a posting of information about departmental projects only on the department's website limited the public's access to information. After receiving further information and clarification from the department, the committee took no further action on the rule.

At its final meeting before preparation of this report to the Legislative Management, the committee approved several motions to carry over consideration of rules of the Industrial Commission. The committee requested the Industrial Commission to provide more information on whether the Industrial Commission has the authority to apply a bond requirement retroactively to existing crude oil and produced water gathering pipelines, and to regulate underground gas gathering pipelines, to require berms on existing well sites, and whether adopting any rules with respect to leakage detection was contrary to legislative intent. The committee will reconsider the rules at its meeting in December 2016.

Rules Voided by Committee

The committee voided a rule adopted by the Education Standards and Practices Board relating to educational requirements for special education majors. The committee expressed a concern the rule may require special education majors to have a second major. The committee agreed with the Education Standards and Practices Board that to clarify the rule for initial licensure of in-state graduates, the rule should be voided.

The committee voided specific portions of rules adopted by the State Board of Dental Examiners relating to the authority of registered dental assistants to perform dental procedures and the level of supervision for registered dental assistants in a public health setting versus in a private dental setting. In voiding the rules, the committee cited the failure of the board to meet the procedural requirements of NDCC Chapter 28-32 and that the adoption of the rules was arbitrary and capricious.

TABLE A

Statistical Summary of Rulemaking
January 2015 Through October 2016 - Supplements 355 Through 362

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
6	360 - APR 16	North Dakota Aeronautics Commission	15	13	0	54	0	0	82
7	362 - OCT 16	Agriculture Commissioner	7	0	0	0	0	0	7
10	355 - JAN 15	Attorney General	11	12	0	0	0	0	23
	359 - JAN 16		55	12	0	1	0	0	68
	362 - OCT 16		6	0	0	3	0	0	9
11	360 - APR 16	Board of Examiners on Audiology and Speech-Language Pathology	9	0	0	0	0	0	9
17	359 - JAN 16	State Board of Chiropractic Examiners	11	1	0	0	0	0	12
18.5	362 - OCT 16	Credit Review Board	0	0	0	33	0	0	33
18.6	362 - OCT 16	North Dakota Mediation Service and Credit Review Board	0	6	0	0	0	0	6
20	356 - APR 15	State Board of Dental Examiners	18	5	0	0	0	0	23
25	355 - JAN 15	State Board of Funeral Service	17	1	0	1	0	0	19
30	359 - JAN 16	Game and Fish Department	2	3	0	0	0	0	5
	360 - APR 16		1	0	0	0	0	0	1
33	355 - JAN 15	State Department of Health	0	1	0	0	0	0	1
	357 - JUL 15		8	11	0	1	0	0	20
	358 - OCT 15		1	0	0	0	0	0	1
	359 - JAN 16		297	226	0	229	0	0	752
	360 - APR 16		12	0	0	2	0	0	14
	361 - JUL 16		14	0	0	0	0	0	14
	362 - OCT 16		15	0	0	0	0	0	15
37	357 - JUL 15	Department of Transportation	1	0	0	0	0	0	1
	360 - APR 16		0	18	0	0	0	0	18
38	359 - JAN 16	Highway Patrol	6	0	0	0	0	0	6
43	362 - OCT 16	Industrial Commission	28	5	0	0	0	0	33
45	356 - APR 15	Insurance Commissioner	0	5	0	0	0	0	5
	358 - OCT 15		9	1	0	0	0	0	10
	359 - JAN 16		41	6	0	0	0	0	47
48	360 - APR 16	State Board of Animal Health	0	0	0	113	0	0	113
48.1	360 - APR 16	State Board of Animal Health	0	90	0	0	0	0	90
54	362 - OCT 16	Board of Nursing	2	0	0	0	0	0	2
61	360 - APR 16	State Board of Pharmacy	12	5	0	0	0	0	17
61.5	359 - JAN 16	North Dakota Board of Physical Therapy	17	0	0	0	0	0	17
62	357 - JUL 15	State Board of Plumbing	2	0	0	0	0	0	2
63	360 - APR 16	Board of Podiatric Medicine	5	0	0	0	0	0	5
66	360 - APR 16	State Board of Psychologist Examiners	21	0	0	0	0	0	21
67	359 - JAN 16	Superintendent of Public Instruction	17	0	0	1	0	0	18
	362 - OCT 16		0	1	0	32	0	0	33
67.1	355 - JAN 15	Education Standards and Practices Board	1	0	0	0	0	0	1
69	356 - APR 15	Public Service Commission	19	1	0	0	0	0	20
	362 - OCT 16		1	0	0	0	0	0	1
69.5	355 - JAN 15	North Dakota Racing Commission	3	0	0	0	0	0	3
	360 - APR 16		20	11	0	0	0	0	31
70	358 - OCT 15	State Real Estate Commission	6	0	0	0	0	0	6
	359 - JAN 16		1	0	0	0	0	0	1
71	360 - APR 16	Retirement Board	27	2	0	0	0	0	29
72	360 - APR 16	Secretary of State	7	0	0	0	0	0	7
75	357 - JUL 15	Department of Human Services	7	0	0	0	0	0	7
	359 - JAN 16		0	3	0	0	0	0	3
	360 - APR 16		114	2	0	2	0	0	118
	360 - APR 16		13	18	0	0	0	0	31
	362 - OCT 16		20	1	0	0	0	0	21
81	360 - APR 16	Tax Commissioner	31	8	0	22	0	0	61
82	360 - APR 16	Board of Trustees of the Teachers' Fund for Retirement	6	1	0	0	0	0	7
87	360 - APR 16	State Board of Veterinary Medical Examiners	1	0	0	0	0	0	1
89	355 - JAN 15	State Water Commission	68	9	0	12	0	0	89
92	360 - APR 16	Workforce Safety and Insurance	14	0	0	0	0	0	14
99	360 - APR 16	State Gaming Commission	87	10	0	0	0	0	97
101	355 - JAN 15	Real Estate Appraiser Qualifications and Ethics Board	8	0	0	0	0	0	8
Total			1,114	488	0	506	0	0	2,108

AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The Agriculture and Natural Resources Committee was assigned two studies.

Section 1 of 2015 House Bill No. 1028 directed a continued study of North Dakota Century Code provisions that relate to agriculture, for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

Section 5 of 2015 House Bill No. 1081 directed a study of the Game and Fish Department. Specifically, the committee was to examine the department's hunting licenses provided to entities for the purpose of fundraising. The study was to include a review of the present law in this and other states and the desirability and feasibility of allowing the department to issue the licenses through certain procedures and with certain limits created by the Legislative Assembly.

The committee was directed to receive a report from the Advisory Committee on Sustainable Agriculture, regarding the status of the committee's activities.

The committee was also directed to receive a report from the State Board of Agricultural Research and Education, regarding its annual evaluation of research activities and expenditures.

Committee members were Representatives Kenton Onstad (Chairman), Roger Brabandt, Bob Hunskor, Dennis Johnson, Dwight Kiefert, Diane Larson, and Wayne Trottier and Senators Bill Bowman, Robert Erbele, Larry Luick, Joe Miller, and Philip Murphy.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

REWRITE OF CENTURY CODE PROVISIONS RELATING TO AGRICULTURE

Objectives and Scope of Committee's Efforts

The Century Code contains more than 90 chapters that pertain to agriculture. Many of the sections within those chapters contain material that is irrelevant, duplicative, inconsistent, illogically arranged, or otherwise unclear in its intent and direction. Ultimately, neither the agencies charged with administering the laws nor the members of the public to whom the laws apply have due notice of the requirements and expectations placed upon them. The Legislative Assembly called for a detailed examination of the state's agriculture laws, with the ultimate goal being to clarify and consolidate the multitude of statutory directives within that topic area.

When the 2007-08 interim Agriculture Committee began its work, the committee determined the nature and extent of the rewrite made amending current sections of Century Code virtually impossible. The committee directed the rewrite create a new title that could accommodate the vast array of agricultural subjects and concepts in an organized and comprehensible fashion. To date, interim Agriculture Committees have rewritten the laws pertaining to noxious weeds, 12 agricultural commodity boards and commissions, agricultural seed, vegetable seed, flower seed, tree seed, seed potato control areas, potato certification, livestock branding, estrays, livestock dealers, wool dealers, ginseng, apiaries, and the Milk Marketing Board (27 chapters). Additionally, the 2013-14 Agriculture Committee rewrote the chapter pertaining to professional soil classifiers (Chapter 43-36), but the rewrite of the chapter failed to pass during the 2015 legislative session (Senate Bill No. 2026).

The 2015-16 Agriculture and Natural Resources Committee undertook a rewrite of the laws pertaining to pest control, eggs, poultry, industrial hemp, meat inspection, county extension agents, general livestock provisions, the Northern Crops Institute, the Agricultural Products Utilization Commission, dairy regulations, the North Dakota Pesticide Act of 1975, chemigation regulation, pesticide registration, pesticide and pesticide container disposal, anhydrous ammonia facilities, anhydrous ammonia risk management, crop protection, fertilizer, the State Fair Association, county fairs, agriculture experiment stations, the Agriculture Development Act, meat packing plant assistance, discrimination in the purchase of farm products, agriculture in the classroom, soil conservation districts, the federal Soil Conservation and Domestic Allotment Act of 1936, miscellaneous agriculture provisions, potato production contracts, forestry and tree distribution, the Trees for North Dakota program, nurseries and nursery stock, plant pests, animal feed requirements, livestock auction markets, satellite livestock auction markets, livestock packing plants, rendering plants, livestock medicine, and the Agriculture Commissioner.

The 2015-16 Agriculture and Natural Resources Committee rewrote 40 chapters and over 480 sections of Century Code. The 2015-16 committee supported the general premise that served as a guide for previous committees involved in rewriting existing statutes--i.e., that the goal was not to change policies that had been put in place by previous

Legislative Assemblies, but rather to craft legislation that would clearly articulate rights, duties, obligations, and consequences and accurately reflect the manner in which business is conducted. This interim's effort concludes the rewrite of the agriculture laws.

Pest Control

Considerations

Chapter 4-32 created the Interstate Pest Control Compact. The compact operated to encourage states to cooperate and fund against pest infestations harmful to agricultural crop yields. The committee questioned whether it was necessary to maintain statutory language for an interstate compact that is no longer operational and had not been operational for some time.

Recommendation

The committee recommends Senate Bill No. 2026 to repeal the chapter of Century Code that pertains to the Interstate Pest Control Compact.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
Chapter 4-32	Repeal

Eggs

Considerations

Chapter 19-07 contains requirements under which eggs may be sold in the state. In its review of the chapter, the committee learned there is a division of rulemaking authority in the chapter between the Agriculture Commissioner and the State Department of Health.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to eggs, move the provisions under the authority of the Agriculture Commissioner into the new agriculture title, and leave the provision relating to the rulemaking authority of the State Department of Health in Title 19.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-07-01	New Section in 4.1-19
19-07-02	New Section in 4.1-19
19-07-02	New Section in 19-02.1
Chapter 19-07	Repeal

Poultry

Considerations

Chapter 4-13.2 requires a poultry division within the Department of Agriculture to regulate poultry within the state. The committee worked with representatives of the Department of Agriculture to clarify definitions and language regarding the poultry division.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to the poultry division and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-13.2-01	4.1-19-01
4-13.2-02	4.1-19-02
4-13.2-03	4.1-19-03
4-13.2-05	4.1-19-04
4-13.2-06	4.1-19-05
Chapter 4-13.2	Repeal

Industrial Hemp

Considerations

Chapter 4-41 regulates the industrial hemp industry in the state. The committee determined that because this is a relatively new chapter within Century Code, very few amendments to the statutory language were needed. The committee worked with representatives of the Department of Agriculture to clarify language regarding the licensing requirements for industrial hemp.

Recommendation

The committee recommends Senate Bill No. 2029 to rewrite the portions of Century Code that pertain to industrial hemp and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-41-01	4.1-18-01
4-41-02	4.1-18-02
4-41-03	4.1-18-03
Chapter 4-41	Repeal

Meat Inspection

Considerations

Chapter 36-24 addresses inspections of meat food products prepared for intrastate commerce. The committee worked with representatives of the Department of Agriculture to clarify language regarding meat inspection.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to meat inspection and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
36-24-01	4.1-31-01
36-24-02	4.1-31-02
36-24-03	4.1-31-03
36-24-04	4.1-31-04
36-24-05	4.1-31-05
36-24-06	4.1-31-06
36-24-07	4.1-31-07
36-24-08	4.1-31-08
36-24-09	4.1-31-09
36-24-10	4.1-31-10
36-24-11	4.1-31-11
36-24-12	4.1-31-12
36-24-13	4.1-31-13
36-24-14	4.1-31-14
36-24-15	4.1-31-15
36-24-16	4.1-31-16
36-24-17	4.1-31-17
36-24-18	4.1-31-18
36-24-19	4.1-31-19
36-24-20	4.1-31-20
36-24-21	4.1-31-21
36-24-22	4.1-31-22
36-24-23	4.1-31-23
36-24-24	4.1-31-24
36-24-25	4.1-31-25
36-24-26	4.1-31-26
Chapter 36-24	Repeal

County Extension Agents

Considerations

Chapter 4-08 addresses extension work performed by county agents. The committee worked with representatives of the Department of Agriculture, the North Dakota Association of Counties, and North Dakota State University (NDSU) to clarify this chapter. The committee consolidated several sections to make the rewritten chapter more concise. The committee determined that although county extension agents provide services related to agriculture, the chapter relates more closely to NDSU and the Agriculture Commissioner has no involvement in the administration of the chapter.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to county extension agents and move the provisions into Title 11. The committee also recommends amending cross-references in Section 57-15-06.7(2).

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-08-01	11-38-01
4-08-02	11-38-02
4-08-03	11-38-03
4-08-04	11-38-04
4-08-05	11-38-02
4-08-06	11-38-01
4-08-07	11-38-05
4-08-08	11-38-01
4-08-09	11-38-06
4-08-10	11-38-07 and a portion into new 11-38-12
4-08-10.1	11-38-08
4-08-11	11-38-10
4-08-12	11-38-09
4-08-13	11-38-04
4-08-14	11-38-11
4-08-15	11-38-01
Did not previously exist	11-38-12
Chapter 4-08	Repeal

General Livestock Provisions

Considerations

Chapter 36-21 contains the general provisions governing livestock within the state. The committee worked with representatives of the Department of Agriculture, The Humane Society of the United States, the North Dakota Stockmen's Association, and the State Board of Animal Health to clarify language regarding general livestock provisions. Although this chapter addresses information related to agriculture, the committee determined the chapter should be left in Title 36 to maintain a separation of agriculture and livestock.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to general livestock provisions and leave the provisions in Title 36. The committee also recommends repealing Section 36-21-05 as being obsolete.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
36-21-01	36-21-01
36-21-05	Repeal
36-21-10	36-21-10
36-21-11	36-21-11
36-21-12	36-21-12
36-21-13	36-21-13
36-21-15	36-21-15
36-21-18	36-21-18
36-21-19	36-21-19

Northern Crops Institute

Considerations

Chapter 4-14.2 created the Northern Crops Institute to provide technical and marketing assistance to facilitate market development and expanded sales of northern-grown crops. The committee worked with representatives of the Department of Agriculture and the Northern Crops Institute to clarify language regarding the Northern Crops Institute. Although the chapter is administered by NDSU, at the request of the Northern Crops Institute the committee determined the chapter should be left in the title on agriculture because most of the work conducted by the Northern Crops Institute is with agriculture commodity groups.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to the Northern Crops Institute and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-14.2-01	4.1-15-01
4-14.2-02	4.1-15-02
4-14.2-03	4.1-15-03
4-14.2-04	4.1-15-04
Chapter 4-14.2	Repeal

Agricultural Products Utilization Commission

Considerations

Chapter 4-14.1 created the Agricultural Products Utilization Commission to research and market new uses for agricultural products in the state. The committee worked with representatives of the Department of Agriculture and the Agricultural Products Utilization Commission to clarify language regarding the Agricultural Products Utilization Commission. The committee determined the chapter should be moved into Title 54 on state government because the Department of Commerce has more control over the activities of the Agricultural Products Utilization Commission than the Department of Agriculture.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to the Agricultural Products Utilization Commission and move the provisions into Title 54.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-14.1-01	Repeal
4-14.1-02	54-60.3-06
4-14.1-03	54-60.3-01
4-14.1-03.1	54-60.3-02
4-14.1-04	54-60.3-03
4-14.1-05	54-60.3-04
4-14.1-06	54-60.3-05
Chapter 4-14.1	Repeal

Dairy Regulation

Considerations

Chapter 4-30 regulates dairy products within the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding dairy regulation.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to dairy regulation and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-30-01	4.1-25-01
4-30-02	4.1-25-02
4-30-02.1	4.1-25-03
4-30-03.1	4.1-25-04
4-30-03.2	4.1-25-05
4-30-03.3	4.1-25-06
4-30-03.4	4.1-25-07
4-30-03.5	4.1-25-08
4-30-03.6	4.1-25-09
4-30-03.7	4.1-25-10
4-30-03.8	4.1-25-11
4-30-03.9	4.1-25-12
4-30-03.10	4.1-25-13
4-30-04	4.1-25-14
4-30-05	4.1-25-15
4-30-06	4.1-25-16
4-30-07	4.1-25-17
4-30-08	4.1-25-18
4-30-09	4.1-25-19
4-30-10	4.1-25-20
4-30-11	4.1-25-21
4-30-12	4.1-25-22
4-30-13.1	4.1-25-23
4-30-13.2	4.1-25-24
4-30-15	4.1-25-25
4-30-18	4.1-23-26
4-30-20	4.1-25-27
4-30-27	4.1-25-28
4-30-28	Repeal, addressed under 4.1-25-50
4-30-29	Repeal, addressed under 4.1-25-50
4-30-30	Repeal, addressed under 4.1-25-50

Current Section	Proposed Section
4-30-31	Repeal, addressed under 4.1-25-50
4-30-32	Repeal, addressed under 4.1-25-50
4-30-33	4.1-25-29 and partially addressed under 4.1-25-50
4-30-34	Repeal, addressed under 4.1-25-50
4-30-35	Repeal, addressed under 4.1-25-50
4-30-36	4.1-25-30
4-30-36.2	4.1-25-31
4-30-36.3	4.1-25-32
4-30-36.4	4.1-25-33
4-30-37	4.1-25-34
4-30-38	Repeal, addressed under 4.1-25-50
4-30-38.1	4.1-25-35
4-30-39	Repeal, addressed under 4.1-25-50
4-30-40	4.1-25-36
4-30-41	4.1-25-37
4-30-41.2	4.1-25-38
4-30-41.3	4.1-25-39
4-30-41.4	4.1-25-40
4-30-45.1	4.1-25-41
4-30-46	4.1-25-42
4-30-47	4.1-25-43
4-30-48	4.1-25-44
4-30-49	4.1-25-45
4-30-50	4.1-25-46
4-30-52	4.1-25-47
4-30-53	4.1-25-48
4-30-54	4.1-25-49
4-30-55.1	4.1-25-50
4-30-55.2	4.1-25-51
4-30-56	4.1-25-52
Chapter 4-30	Repeal

North Dakota Pesticide Act

Considerations

Chapter 4-35 created the North Dakota Pesticide Act, which regulates the use of pesticides within the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding the Act. The committee consolidated several sections to make the chapter more concise. The committee determined several sections in the chapter were unnecessary entirely and others were better suited in the new agriculture chapter relating to crop protection.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to the Act and move the provisions into the relevant chapters under the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-35-01	Repeal
4-35-02	4.1-33-02
4-35-03	Repeal, addressed under 4.1-33-03
4-35-04	Repeal
4-35-05	4.1-33-01
4-35-06	4.1-33-03
4-35-06.1	4.1-33-04
4-35-06.2	4.1-39-01
4-35-06.3	4.1-39-08
4-35-08	4.1-33-06
4-35-09	4.1-33-07
4-35-09.1	4.1-33-10
4-35-10	4.1-33-08
4-35-11	4.1-33-09
4-35-12	4.1-33-11
4-35-12.1	4.1-33-22
4-35-13	4.1-33-05
4-35-14	4.1-33-12
4-35-15	4.1-33-13
4-35-16	4.1-33-14
4-35-18	4.1-33-15
4-35-19	4.1-33-16
4-35-20	4.1-33-17

Current Section	Proposed Section
4-35-21.3	4.1-33-18
4-35-22	4.1-33-19
4-35-23	4.1-33-20
4-35-24	4.1-33-21
4-35-25	4.1-33-23
4-35-26	Repeal, content combined with additional section in 4.1-33-02
4-35-27	4.1-33-24
4-35-28	4.1-33-25
4-35-30	4.1-39-02
Chapter 4-35	Repeal

Chemigation Regulation

Considerations

Chapter 4-35.1 regulates the use and application of chemicals to land or crops through an irrigation system. The committee worked with representatives of the Department of Agriculture to clarify language regarding chemigation regulation.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to chemigation regulation and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-35.1-01	4.1-35-01
4-35.1-02	4.1-35-02
4-35.1-03	4.1-35-03
4-35.1-04	4.1-35-04
4-35.1-05	4.1-35-05
4-35.1-06	4.1-35-06
Chapter 4-35.1	Repeal

Pesticide Registration

Considerations

Chapter 19-18 regulates the reporting and registration of pesticides. The committee worked with representatives of the Department of Agriculture to clarify language regarding pesticide registration. The committee consolidated several sections to make the chapter more concise. The committee also determined one section was better suited in the agriculture chapter regarding crop protection.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to pesticide registration and move the provisions into the relevant chapters under the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-18-02	4.1-34-01
19-18-02.1	4.1-39-07
19-18-03	4.1-34-02
19-18-04	4.1-34-03
19-18-04.1	4.1-34-04
19-18-04.2	4.1-34-05
19-18-05	4.1-34-06
19-18-06	4.1-34-07
19-18-06.1	4.1-34-08
19-18-07	4.1-34-09
19-18-08	4.1-34-11
19-18-09	4.1-34-12
19-18-10	Repeal, addressed in 4.1-34-01
19-18-11	4.1-34-13
19-18-12	4.1-34-14
19-18-13	4.1-34-15
Chapter 19-18	Repeal

Pesticide and Pesticide Container Disposal

Considerations

Chapter 4-35.2 contains provisions addressing the safe disposal of pesticides and the containers within which the pesticides are held. The committee worked representatives of with the Department of Agriculture to clarify language regarding pesticide and pesticide container disposal.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to pesticide and pesticide container disposal and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-35.2-01	4.1-36-01
4-35.2-02	4.1-36-02
4-35.2-03	4.1-36-03
4-35.2-04	4.1-36-04
Chapter 4-35.2	Repeal

Anhydrous Ammonia Facilities

Considerations

Chapter 19-20.2 was enacted to allow the Agriculture Commissioner the means to regulate anhydrous ammonia storage facilities. The committee worked with representatives of the Department of Agriculture to clarify language regarding anhydrous ammonia facilities.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to anhydrous ammonia facilities and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-20.2-01	4.1-37-01
19-20.2-01.1	4.1-37-02
19-20.2-02	Repeal, a portion into 4.1-37-03 and a portion into 4.1-37-04
19-20.2-03	4.1-37-03
19-20.2-04	4.1-37-04
19-20.2-05	4.1-37-05
19-20.2-06	4.1-37-06
19-20.2-06.1	4.1-37-07
19-20.2-07	4.1-37-08
19-20.2-07.1	4.1-37-09
19-20.2-08	4.1-37-10
19-20.2-08.2	4.1-37-11
19-20.2-08.3	4.1-37-12
19-20.2-08.4	4.1-37-13
19-20.2-08.5	4.1-37-14
19-20.2-09	4.1-37-15
19-20.2-10	4.1-37-16
Chapter 19-20.2	Repeal

Anhydrous Ammonia Risk Management

Considerations

Chapter 19-20.3 contains provisions allowing the Agriculture Commissioner to regulate anhydrous ammonia in accordance with the federal risk management program under the federal Clean Air Act of 1990. The committee worked with representatives of the Department of Agriculture to clarify language regarding anhydrous ammonia risk management.

Recommendation

The committee recommends a Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to anhydrous ammonia risk management and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-20.3-01	4.1-38-01
19-20.3-02	4.1-38-02
Chapter 19-20.3	Repeal

Crop Protection

Considerations

Chapter 4-40 regulates crop protection products within the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding crop protection products. The committee determined several sections of the chapters regarding the North Dakota Pesticide Act and pesticide registration were better suited to be combined into the new agriculture chapter on crop protection products.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to crop protection products and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-40-01	4.1-39-03
4-40-02	4.1-39-04
4-40-03	4.1-39-05
4-40-04	4.1-39-06
Chapter 4-40	Repeal

Fertilizer

Considerations

Chapter 19-20.1 regulates the use of fertilizers in the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding fertilizer and soil conditioner.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to fertilizer and soil conditioner and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-20.1-02	4.1-40-01
19-20.1-03	4.1-40-02
19-20.1-03.1	4.1-40-03
19-20.1-03.2	4.1-40-04
19-20.1-03.4	4.1-40-05
19-20.1-04	4.1-40-06
19-20.1-06	4.1-40-07
19-20.1-08	4.1-40-08
19-20.1-10	4.1-40-09
19-20.1-11	4.1-40-10
19-20.1-12	4.1-40-11
19-20.1-13	4.1-40-12
19-20.1-14	4.1-40-13
19-20.1-15	4.1-40-14
19-20.1-16	4.1-40-15
19-20.1-17	4.1-40-16
19-20.1-17.1	4.1-40-17
19-20.1-18	4.1-40-18
Chapter 19-20.1	Repeal

State Fair Association

Considerations

Chapter 4-02.1 created the State Fair Association and sets forth the duties and responsibilities of the association. The committee worked with representatives of the Department of Agriculture, the Office of Management and Budget, and the State Fair Association to clarify language regarding the State Fair Association. At the request of the State Fair Association Manager, the committee determined the chapter should remain in the agriculture title.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to the State Fair Association and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-02.1-01	4.1-55-01
4-02.1-02	Repeal, unnecessary
4-02.1-03	4.1-55-02
4-02.1-04	4.1-55-03
4-02.1-05	4.1-55-04
4-02.1-06	4.1-55-05
4-02.1-07	4.1-55-06
4-02.1-08	4.1-55-07
4-02.1-09	4.1-55-08
4-02.1-10	4.1-55-09
4-02.1-11	4.1-55-10
4-02.1-12	4.1-55-11
4-02.1-13	4.1-55-12
4-02.1-14	4.1-55-13
4-02.1-15	4.1-55-14
4-02.1-16	4.1-55-15
4-02.1-17	4.1-55-16
4-02.1-18	4.1-55-17
4-02.1-19	4.1-55-18
4-02.1-20	4.1-55-19
4-02.1-21	4.1-55-20
4-02.1-22	Repeal, obsolete
4-02.1-23	4.1-55-21
4-02.1-25	4.1-55-22
4-02.1-26	4.1-55-23
4-02.1-27	4.1-55-24
Chapter 4-02.1	Repeal

Agricultural and County Fair Associations

Considerations

Chapter 4-02 regulates agricultural and county fair associations within the state. The committee worked with representatives of the Department of Agriculture and the North Dakota Association of Counties to clarify language regarding the associations. The committee consolidated several sections to make the chapter more concise. The committee determined a number of sections to be redundant, obsolete, and unnecessary. The committee determined that although related to agriculture, this chapter should be located under Title 11 regarding counties.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to fair associations and move the provisions into Title 11 regarding counties.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-02-01	11-39-07
4-02-02	11-39-08
4-02-04	Repeal, redundant, addressed under 11-39-01
4-02-05	Repeal, unnecessary
4-02-07	11-39-09
4-02-08	11-39-01
4-02-10	Repeal, content combined with additional section in 11-39-02
4-02-12	11-39-10
4-02-26	11-39-02
4-02-26.1	11-39-04
4-02-27.3	11-39-05
4-02-28	Repeal, redundant
4-02-29	11-39-06
4-02-30	11-39-03
4-02-31	Repeal, obsolete and redundant
4-02-36	Repeal, unnecessary
Chapter 4-02	Repeal

Agriculture Experiment Stations

Considerations

Chapter 4-05.1 regulates the North Dakota Agricultural Experiment Station and extension centers throughout the state. The committee worked with representatives of the Department of Agriculture and the NDSU Extension Service to clarify language regarding agricultural experiment stations. The committee determined that although related to agriculture, the Agricultural Experiment Station and extension centers are controlled and administered by the State Board of Agricultural Research and Education and the President of NDSU under the supervision of the State Board of Higher Education. The committee determined the chapter should be located under Title 15 regarding education.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to the Agricultural Experiment Station and research extension centers and move the provisions into Title 15 regarding education.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-05.1-01	15-12.1-01
4-05.1-02	15-12.1-02
4-05.1-03	15-12.1-03
4-05.1-04	15-12.1-04
4-05.1-05	15-12.1-05
4-05.1-06	15-12.1-06
4-05.1-07	15-12.1-07
4-05.1-08	15-12.1-08
4-05.1-09	15-12.1-09
4-05.1-10	15-12.1-10
4-05.1-11	15-12.1-11
4-05.1-12	15-12.1-12
4-05.1-15	15-12.1-13
4-05.1-16	15-12.1-14
4-05.1-17	15-12.1-15
4-05.1-18	15-12.1-16
4-05.1-19	15-12.1-17
4-05.1-20	15-12.1-18
4-05.1-21	15-12.1-19
Chapter 4-05.1	Repeal

Agricultural Development Act

Considerations

Chapter 4-36 created the Agricultural Development Act. Based upon information provided by representatives of the Bank of North Dakota, the committee determined the program has not been in use for some time. The committee questioned whether it is necessary to maintain statutory language for programs not in use and which have been replaced with more recent and modern programs.

Recommendation

The committee recommends Senate Bill No. 2026 to repeal the chapter of Century Code that pertains to the Agricultural Development Act.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
Chapter 4-36	Repeal

Meat Packing Plant Assistance

Considerations

Chapter 4-43 provides for a Bank of North Dakota program to assist in financial assistance establishing meat packing plants within the state. Based upon information provided by representatives of the Bank, the committee determined the program has not been in use for some time. The committee questioned whether it is necessary to maintain statutory language for programs not in use and which have been replaced with more recent and modern programs.

Recommendation

The committee recommends Senate Bill No. 2026 to repeal the chapter of Century Code that pertains to meat packing plant assistance.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
Chapter 4-43	Repeal

Unfair Discrimination in the Purchase of Farm Products

Considerations

Chapter 4-14 regulates the purchase of farm products and any unfair discrimination occurring during the purchase process. The committee received information from representatives of the Department of Agriculture, which indicated there is no record of the chapter ever being utilized or enforced. The committee questioned whether it is necessary to maintain statutory language for a chapter that has no record of ever being utilized or enforced according to representatives of the Department of Agriculture.

Recommendation

The committee recommends Senate Bill No. 2026 to repeal the chapter of Century Code that pertains to the unfair discrimination in the purchase of farm products as it is obsolete and not in use.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
Chapter 4-14	Repeal

Agriculture in the Classroom

Considerations

Chapter 4-37 created the agriculture in the classroom program to promote and foster an understanding of the agricultural economy of the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding agriculture in the classroom. The committee determined the content of this chapter should be condensed into a single section of statutory language under the chapter addressing the Agriculture Commissioner.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to agriculture in the classroom, condense the information into a single statutory section, and move the provision into the new agriculture title under the Agriculture Commissioner chapter.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-37-01	4.1-01-22
4-37-02	4.1-01-22
4-37-03	4.1-01-22
4-37-04	4.1-01-22
4-37-05	4.1-01-22
Chapter 4-37	Repeal

Soil Conservation Districts

Considerations

Chapter 4-22 regulates the conservation of soil and soil resources and provides for the creation and operation of soil conservation districts. The committee worked with representatives of the Department of Agriculture to clarify language regarding soil conservation districts.

Recommendation

The committee recommends Senate Bill No. 2029 to rewrite the portions of Century Code that pertain to soil conservation districts and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-22-01	4.1-20-01
4-22-02	4.1-20-02
4-22-03	4.1-20-03
4-22-04	4.1-20-04
4-22-06	4.1-20-05
4-22-06.1	4.1-20-06
4-22-08	4.1-20-07
4-22-09	4.1-20-08

Current Section	Proposed Section
4-22-10	4.1-20-09
4-22-11	4.1-20-10
4-22-12	4.1-20-11
4-22-13	4.1-20-12
4-22-14	4.1-20-13
4-22-15	4.1-20-14
4-22-16	4.1-20-15
4-22-17	4.1-20-16
4-22-21	4.1-20-17
4-22-22	4.1-20-18
4-22-22.2	4.1-20-19
4-22-23	4.1-20-20
4-22-23.1	4.1-20-21
4-22-24	4.1-20-22
4-22-25	4.1-20-23
4-22-26	4.1-20-24
4-22-27	4.1-20-25
4-22-28	4.1-20-26
4-22-29	4.1-20-27
4-22-30	4.1-20-28
4-22-31	4.1-20-29
4-22-32	4.1-20-30
4-22-33	4.1-20-31
4-22-34	4.1-20-32
4-22-35	4.1-20-33
4-22-36	4.1-20-34
4-22-37	4.1-20-35
4-22-38	4.1-20-36
4-22-39	4.1-20-37
4-22-40	4.1-20-38
4-22-41	4.1-20-39
4-22-42	4.1-20-40
4-22-43	4.1-20-41
4-22-44	4.1-20-42
4-22-45	4.1-20-43
4-22-46	4.1-20-44
4-22-47	4.1-20-45
4-22-48	4.1-20-46
4-22-49	4.1-20-47
4-22-50	4.1-20-48
4-22-51	4.1-20-49
Chapter 4-22	Repeal

Soil Conservation and Domestic Allotment Act

Considerations

Chapter 4-23 established the intent of the state to cooperate with the government and agencies of other states and the United States under the Soil Conservation and Domestic Allotment Act of 1936. The history of the chapter indicates the program was created as a result of the dust bowl conditions of the 1930s. The committee questioned whether it is necessary to maintain statutory language for a program that was created as a result of dust bowl conditions during the Great Depression of the 1930s. The committee received information indicating the NDSU Extension Service, which is the administering agency, has no recent records regarding the administration of the program and the program is likely obsolete.

Recommendation

The committee recommends Senate Bill No. 2026 to repeal the chapter of Century Code that pertains to the Soil Conservation and Domestic Allotment Act.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
Chapter 4-23	Repeal

Miscellaneous Agriculture Provisions

Considerations

Chapter 4-24 contains statutory provisions related to agriculture which were not directly related to any other chapters regarding agriculture. The committee worked with representatives of the Department of Agriculture to clarify language regarding the chapter on miscellaneous agriculture provisions.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to miscellaneous agriculture provisions and move the provision into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-24-06	4.1-54-01
4-24-08	4.1-54-02
4-24-09	4.1-54-03
4-24-10	4.1-54-04
4-24-11	4.1-54-05
4-24-11.1	4.1-54-06
4-24-12	4.1-54-07
4-24-13	4.1-54-08
Chapter 4-24	Repeal

Potato Production Contracts

Considerations

Chapter 4-11.1 regulates potato production contracts. The committee worked with representatives of the Department of Agriculture to clarify language regarding potato production contracts.

Recommendation

The committee recommends Senate Bill No. 2029 to rewrite the portions of Century Code that pertain to potato production contracts and move the provision into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-11.1-01	4.1-48-01
4-11.1-02	4.1-48-02
4-11.1-03	4.1-48-03
4-11.1-04	4.1-48-04
4-11.1-05	4.1-48-05
Chapter 4-11.1	Repeal

Forestry and Tree Distribution

Considerations

Chapter 4-19 regulates forestry and tree distribution within the state. The committee worked with representatives of the Department of Agriculture and the State Forester to clarify language regarding forestry and tree distribution. The committee determined the contents of the chapters on forestry and tree distribution and the Trees for North Dakota program can be consolidated into a single chapter under the new agriculture title for conciseness.

Recommendation

The committee recommends Senate Bill No. 2029 to rewrite the portions of Century Code that pertain to forestry and tree distribution and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-19-01	4.1-21-01
4-19-01.2	4.1-21-04
4-19-01.3	4.1-21-03
4-19-02	4.1-21-02
4-19-03	4.1-21-05
4-19-05	4.1-21-06
4-19-06	4.1-21-07
4-19-07	4.1-21-08
4-19-08	4.1-21-09

Current Section	Proposed Section
4-19-09	4.1-21-10
4-19-10	4.1-21-11
Chapter 4-19	Repeal

Trees for North Dakota Program

Considerations

Chapter 4-21.2 created the Trees for North Dakota program to strengthen the tradition of tree planting and management in the state. The committee worked with representatives of the Department of Agriculture and the State Forester to clarify language regarding the Trees for North Dakota program. The committee determined the contents of the chapter could be consolidated into a single section of statutory language and combined with the provisions regarding forestry and tree distribution under the new agriculture title.

Recommendation

The committee recommends Senate Bill No. 2029 to rewrite the portions of Century Code that pertain to the Trees for North Dakota program, consolidate the information into a single statutory section, combine the section with the provisions regarding forestry and tree distribution, and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-21.2-01	4.1-21-12
4-21.2-02	4.1-21-12
4-21.2-03	4.1-21-12
Chapter 4-21.2	Repeal

Nurseries and Nursery Stock

Considerations

Chapter 4-21.1 regulates nurseries and nursey stock within the state. The chapter gives authority to the Agriculture Commissioner to inspect and certify nursery stock. The committee worked with representatives of the Department of Agriculture to clarify language regarding nurseries and nursery stock.

Recommendation

The committee recommends Senate Bill No. 2029 to rewrite the portions of Century Code that pertain to nurseries and nursery stock and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-21.1-01	4.1-22-01
4-21.1-02	4.1-22-02
4-21.1-03	4.1-22-03
4-21.1-04	4.1-22-04
4-21.1-05	4.1-22-05
4-21.1-06	4.1-22-06
4-21.1-11	4.1-22-07
4-21.1-12	4.1-22-08
4-21.1-13	4.1-22-09
4-21.1-14	4.1-22-10
4-21.1-16	4.1-22-11
Chapter 4-21.1	Repeal

Plant Pests

Considerations

Chapter 4-33 authorizes the Agriculture Commissioner to locate, suppress, control, or eradicate plant pests within the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding plant pests.

Recommendation

The committee recommends Senate Bill No. 2027 to rewrite the portions of Century Code that pertain to plant pests and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-33-01	4.1-23-01
4-33-02	4.1-23-02
4-33-03	4.1-23-03
4-33-04	4.1-23-04
4-33-05	4.1-23-05
4-33-06	4.1-23-06
4-33-07	4.1-23-07
4-33-08	4.1-23-08
4-33-09	4.1-23-09
4-33-10	4.1-23-10
4-33-11	4.1-23-11
4-33-12	4.1-23-12
Chapter 4-33	Repeal

Animal Feed Requirements

Considerations

Chapter 19-13.1 designates the Agriculture Commissioner to regulate commercial feed manufacturing and distribution within the state. The committee worked with representatives of the Department of Agriculture to clarify language regarding the chapter on commercial animal feed.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to animal feed and move the provisions from Title 19 into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-13.1-02	4.1-41-01
19-13.1-03.1	4.1-41-02
19-13.1-03.2	4.1-41-03
19-13.1-03.3	4.1-41-04
19-13.1-03.4	4.1-41-05
19-13.1-04	4.1-41-06
19-13.1-04.1	4.1-41-07
19-13.1-06	4.1-41-08
19-13.1-06.1	4.1-41-09
19-13.1-06.2	4.1-41-10
19-13.1-07	4.1-41-11
19-13.1-08	4.1-41-12
19-13.1-09	4.1-41-13
19-13.1-11	4.1-41-14
19-13.1-12	4.1-41-15
19-13.1-13	4.1-41-16
19-13.1-14	4.1-41-17
19-13.1-15	4.1-41-18
19-13.1-16	4.1-41-19
Chapter 19-13.1	Repeal

Livestock Auction Markets

Considerations

Chapter 36-05 contains provisions relating to the regulation and licensing by the Agriculture Commissioner of livestock auction markets within the state. The committee worked with representatives of the Department of Agriculture and the State Veterinarian to clarify language regarding livestock auction markets.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to livestock auction markets and move the provisions from Title 36 into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
36-05-01	4.1-27-01
36-05-02	4.1-27-02
36-05-03	4.1-27-03

Current Section	Proposed Section
36-05-04	4.1-27-04
36-05-04.1	4.1-27-05
36-05-05	4.1-27-06
36-05-06	4.1-27-07
36-05-06.1	4.1-27-08
36-05-06.2	4.1-27-09
36-05-07	4.1-27-10
36-05-08	4.1-27-11
36-05-09	4.1-27-12
36-05-09.1	4.1-27-13
36-05-10	4.1-27-14
36-05-10.1	4.1-27-15
36-05-11	4.1-27-16
36-05-11.1	4.1-27-17
36-05-12	4.1-27-18
36-05-13	4.1-27-19
36-05-13.1	4.1-27-20
36-05-13.2	4.1-27-21
36-05-14	4.1-27-22
36-05-15	4.1-27-23
Chapter 36-05	Repeal

Satellite Livestock Auction Markets

Considerations

Chapter 36-05.1 contains provisions relating to the regulation and licensing by the Agriculture Commissioner of satellite video livestock auction markets within the state. The committee worked with representatives of the Department of Agriculture and the North Dakota Stockmen's Association to clarify language regarding satellite video livestock auction markets.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to satellite video livestock auction markets and move the provisions from Title 36 into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
36-05.1-01	4.1-28-01
36-05.1-02	4.1-28-02
36-05.1-03	4.1-28-03
36-05.1-04	4.1-28-04
36-05.1-05	4.1-28-05
36-05.1-06	4.1-28-06
36-05.1-07	4.1-28-07
Chapter 36-05.1	Repeal

Livestock Packing Plants

Considerations

Chapter 36-06 regulates the purchase of livestock by packing plants. The committee worked with representatives of the Department of Agriculture and the State Veterinarian to clarify language regarding livestock packing plants. The committee determined that although the language in this chapter is outdated, the contents may be needed if facilities housing packing plants are built in North Dakota.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to livestock packing plants and move the provisions from Title 36 into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
36-06-01	4.1-30-01
36-06-02	4.1-30-02
36-06-03	4.1-30-03
Chapter 36-06	Repeal

Rendering Plants

Considerations

Chapter 36-07 regulates the operation of rendering plants within the state which must be licensed by the Agriculture Commissioner and inspected by the State Veterinarian. The committee worked with representatives of the Department of Agriculture to clarify language regarding rendering plants.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to rendering plants and move the provisions from Title 36 into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
36-07-01	4.1-32-01
36-07-02	4.1-32-02
36-07-03	4.1-32-03
36-07-07	4.1-32-04
36-07-08	4.1-32-05
36-07-09	4.1-32-06
36-07-10	4.1-32-07
36-07-11	4.1-32-08
36-07-12	4.1-32-09
36-07-13	4.1-32-10
36-07-14	4.1-32-11
Chapter 36-07	Repeal

Livestock Medicine

Considerations

Chapter 19-14 addresses the registration and regulation by the Agriculture Commissioner of livestock medicine sold within the state. The committee worked with representatives of the Department of Agriculture and the State Veterinarian to clarify language regarding livestock medicine.

Recommendation

The committee recommends Senate Bill No. 2028 to rewrite the portions of Century Code that pertain to livestock medicine and move the provisions from Title 19 into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
19-14-01	4.1-53-01
19-14-02	4.1-53-02
19-14-03	4.1-53-03
19-14-04	4.1-53-04
19-14-05	4.1-53-05
19-14-06	4.1-53-06
19-14-07	4.1-53-07
19-14-08	4.1-53-08
Chapter 19-14	Repeal

Agriculture Commissioner

Considerations

Chapter 4-01 contains provisions regarding the authority and many of the duties of the Agriculture Commissioner. The committee worked with representatives of the Department of Agriculture to clarify language in the chapter. Based upon the discussions with the representatives of the department, the committee determined some of the language in the chapter was obsolete and could be repealed.

Recommendation

The committee recommends Senate Bill No. 2026 to rewrite the portions of Century Code that pertain to the Agriculture Commissioner and move the provisions into the new agriculture title.

The following cross-reference table indicates the source and placement of the proposed content:

Current Section	Proposed Section
4-01-15	4.1-01-03
4-01-16	4.1-01-04
4-01-17.1	4.1-01-05
4-01-17.2	4.1-01-06
4-01-17.3	4.1-01-07
4-01-19	4.1-01-08
4-01-20	Repeal, obsolete
4-01-21	4.1-01-02
4-01-22	4.1-01-09
4-01-23	4.1-01-10
4-01-24	4.1-01-11
4-01-26	4.1-01-12
4-01-27	4.1-01-13
4-01-28	4.1-01-14
4-01-29	4.1-01-15
4-01-30	4.1-01-16
4-01-31	4.1-01-17
4-01-32	4.1-01-18
4-01-33	4.1-01-19
4-01-34	4.1-01-20
4-01-35	4.1-01-21
Chapter 4-01	Repeal

Additional Recommendations

Upon the completion of review of the remaining chapters relating to agriculture, the committee determined the agriculture rewrite project to be complete. The committee removed a number of chapters from the rewrite project that were initially a part of the plan due to those chapters being repealed in previous sessions, being under the authority of a state agency other than the Department of Agriculture, or maintaining a separation between agriculture and other subject matter, such as livestock. The chapters removed from the rewrite project include 4-16, 4-21, 6-09.8, 6-09.9, 6-09.10, 6-09.11, 6-09.13, 10-06.1, 19-05.1, 19-06.1, 19-17, 19-21, 19-22, 19-22.1, 35-05, 35-06, 35-17, 35-30, 35-31, 36-01, 36-08, 36-11, 36-12, 36-14, 36-14.1, 36-15, 36-22, 36-25, 36-26, 42-04, 54-18, 60-01, 60-02, 60-02.1, 60-03, 60-04, 60-05, 60-06, 60-10, and 63-05.

The committee determined it would not be feasible to track approximately 35 separate bills comprising 40 rewritten chapters during the 2017 legislative session. Therefore, the committee recommends four bills consolidating the bill drafts approved by the committee. The committee also learned during the course of the agriculture rewrite project, gaps were left in the sequential numbering of chapters being placed in the new agriculture Title 4.1. Therefore, the committee proposed redesignating a number of the chapter numbers to provide a more sequential numbering of the new title. The committee recommends instructing the Code Revisor to close the gaps between chapters in Title 4.1 at the conclusion of the 2017 legislative session. The committee recommends Senate Bill No. 2026 to consolidate the provisions relating to the general administration authority of the Agriculture Commissioner and other agricultural entities and to redesignate various chapter throughout Title 4.1, Senate Bill No. 2027 to consolidate the provisions relating to fertilization and pesticides, Senate Bill No. 2028 to consolidate the provisions relating to plants and trees, and Senate Bill No. 2029 to consolidate the provisions relating to livestock and other animals. The following table lists the new chapters included in each bill:

Senate Bill No. 2026 - Administrative Authority Bill	
4.1-01	Agriculture Commissioner
4.1-15	Northern Crops Institute
4.1-19	Poultry
4.1-54	Miscellaneous Agricultural Provisions
4.1-55	State Fair Association
11-38	County Extension Agents
11-39	County Fair Associations
15-12.1	Agricultural Experiment Station
19-02.1	Egg Labeling
54-60.3	Agricultural Products Utilization Commission
	Redesignation of Century Code Chapters

Senate Bill No. 2027 - Fertilizer and Pesticide Bill	
4.1-23	Plant Pests
4.1-33	Pesticides
4.1-34	Pesticide Registration
4.1-35	Chemigation
4.1-36	Pesticide and Pesticide Container Disposal
4.1-37	Anhydrous Ammonia
4.1-38	Anhydrous Ammonia Risk Management
4.1-39	Crop Product Protection and Harmonization Board
4.1-40	Fertilizer
Senate Bill No. 2028 - Livestock and Other Animals Bill	
4.1-25	Dairy
4.1-27	Livestock Auction Markets
4.1-28	Internet Livestock Auctions
4.1-30	Livestock Packing Plants
4.1-31	Meat Inspection
4.1-32	Rendering Plants
4.1-41	Animal Feed Requirements
4.1-53	Livestock Medicine
Senate Bill No. 2029 - Plants and Trees Bill	
4.1-18	Industrial Hemp
4.1-20	Soil Conservation
4.1-21	Forestry
4.1-22	Nurseries
4.1-48	Potato Production Contracts

GAME AND FISH SPECIAL ALLOCATION HUNTING LICENSES

Background

There are nine sections in Century Code which authorize special allocation hunting licenses to be provided to various entities.

The Legislative Assembly first authorized the Governor to issue orders and proclamations under the game and fish title when it enacted Section 20-08-01 in 1923. In 1961 the Legislative Assembly enacted Section 20-08-03, which detailed the contents to be included in any order or proclamation by the Governor relating to the taking of game birds, fish, or animals. Title 20 of Century Code was repealed in 1973, and the contents of Section 20-08-01 were moved into the newly enacted Section 20.1-08-01. The contents of Section 20-08-03 were moved to Section 20.1-08-04.

In 1973 the Legislative Assembly also enacted Section 20.1-04-07. This section initially authorized the Governor, by proclamation, to provide for the taking of wild turkeys through a lottery. The provision was amended in 2007 to allow the Governor, by proclamation, to make one wild turkey license available per year to the National Wild Turkey Federation through a raffle or auction. The provision was amended again by the 2015 Legislative Assembly to add two wild turkey licenses annually, through gubernatorial proclamation, to the Outdoor Adventure Foundation to make available for use by qualified youths who have cancer or a life-threatening illness.

In 1977 Section 20.1-08-04.1 was enacted to allow the Governor, by proclamation, to make a big horn sheep license available annually through the use of a lottery. This provision was amended in 1985 to allow the Governor, by proclamation, to auction a license to hunt big horn sheep to the highest bidder. The provision was again amended in 2007 to allow the Governor to make one license available to the Minnesota-Wisconsin Chapter of the Foundation for North American Wild Sheep through raffle or auction.

Section 20.1-08-04.2 was enacted in 1977 to allow the Governor, by proclamation, to provide for the taking of a moose through a lottery. A 1993 amendment allowed the Governor to provide a license through the Game Warden Association. The amendment required a raffle to be held for the license. Ten percent of the gross proceeds could be used to promote the raffle. Fifteen percent of the net proceeds were to be remitted to the Game and Fish Department to be used for moose management and related projects in the state. All remaining proceeds were required to be used for the construction and maintenance of the North American Wildlife Enforcement Officers Association Game Warden Museum located at the International Peace Garden. The amendment limited the Governor to issuing one license per year, and five licenses total under the provision. A 1997 amendment changed the maximum number of licenses allowed under the provision from 5 to 10. An amendment in 2015 allowed the Governor to make an additional license available, by proclamation, under Section 20.1-08-04.13.

In 1987 Section 20.1-08-04.6 was enacted to allow the Governor to make a proclamation to provide for the taking of an elk through a lottery. The provision was amended in 1991 to allow for a license to be made available to the Rocky Mountain Elk Foundation through proclamation. The amendment required a raffle for the license. Ten percent of the

gross proceeds were to be used to promote the raffle. The remaining net proceeds were required to be used for elk management and related projects in North Dakota as described under the Rocky Mountain Elk Foundation policies and objectives. A 2015 amendment allowed the Governor to make an additional license available, by proclamation, under Section 20.1-08-04.13.

Section 20.1-08-04.8 was enacted in 2003 to allow a gubernatorial proclamation to provide for the taking of a mule deer through the Mule Deer Foundation. A single license was to be made available through raffle or auction.

In 2007 Sections 20.1-08-04.12 and 20.1-08-04.13 were enacted. Section 20.1-08-04.12 allowed for the taking of one antelope per year through a raffle process held by the North Dakota Hunters Education Association. Section 20.1-08-04.13 made available to one nonprofit 501(c)(3) organization per year, through gubernatorial proclamation, up to eight deer licenses and four antelope licenses. These licenses were for use by qualified children with terminal illnesses. A 2015 amendment to Section 20.1-08-04.13 made the licenses available to the Outdoor Adventure Foundation. The amendment also added one elk license and one moose license. The amendment changed the number of deer licenses available from eight to seven, and the number of antelope licenses available from four to two.

In 2011 Section 20.1-02-04(15) was enacted to allow the Director of the Game and Fish Department to provide four any deer licenses to the Wounded Warrior Project annually. The provision was amended in 2013 to allow for four any deer licenses and six any white-tailed deer licenses annually to the Injured Military Wildlife Project.

Section 20.1-08-04.14 was enacted in 2015 to provide a license to hunt elk to Annie's House at Bottineau Winter Park. The provision requires a raffle to be held to determine the recipient of the license.

The Governor has utilized the Governor's authority to issue special allocation licenses, via proclamation, for each of the relevant provisions. The number of special allocation licenses available through the Game and Fish Department are included in, and not in addition to, the total number of licenses made available for each species each year. Organizations issuing the special allocation licenses made available are required to report to the Game and Fish Department certain information, including the name of the recipient of the special allocation license, the net expenses of any raffle or auction, the gross proceeds, and the net proceeds.

TESTIMONY AND COMMITTEE CONSIDERATIONS

The committee questioned whether the Legislative Assembly is the appropriate body to determine what kind and how many special allocation hunting licenses should be made available to various entities. The committee also questioned whether the Legislative Assembly is the appropriate body to determine which entities should receive special allocation hunting licenses. The committee recognized there are many good causes and entities worthy of a special allocation hunting license that could be utilized for fundraising purposes, but at some point a line needs to be drawn. The committee indicated that the Game and Fish Department may be in a better position to make the relevant determinations than the Legislative Assembly. The Game and Fish Department has direct control over game management and is better suited to determine how many hunting licenses a specific species population can sustain each hunting season.

The committee received testimony from a representative of the Game and Fish Department indicating the department makes the licenses available to the various entities and develops the rules regarding the reporting requirements on the proceeds of the entities that receive the licenses. Testimony suggested the Legislative Assembly is the appropriate body to determine which types and how many special allocation licenses are made available to entities for fundraising purposes and the department would prefer to administer the legislative policies rather than be responsible for setting the policies.

The committee received testimony from a representative of the Attorney General with respect to oversight of the big game license raffles. According to the testimony, the Attorney General's office does not license the raffles or audit the organizations.

The committee received information relating to the issuance of special allocation hunting licenses in neighboring states. A representative of the Game and Fish Department reported Montana, South Dakota, and Wyoming administer special allocation hunting licenses through a commission that has administrative and statutory authority.

The committee considered a bill draft to allow a limited number of special allocation hunting licenses to originate with and be under the authority of the Game and Fish Department. The bill draft would allow entities currently authorized to receive a special allocation hunting license by statute to be grandfathered into the new system.

Committee members generally agreed the Legislative Assembly should retain oversight of the special allocation hunting license process. However, committee members also generally supported the concept of granting administrative authority over the special allocation licenses to the Game and Fish Department.

Recommendation

The committee recommends House Bill No. 1025 to allow the Director of the Game and Fish Department to receive and consider applications for a limited number of special allocation hunting licenses in addition to a number of statutorily authorized special allocation licenses.

Proponents of the bill draft supported the concept of providing the Director of the Game and Fish Department the discretion to issue a limited number of special allocation licenses annually based upon species population. Committee members also generally supported returning the statutory list of the currently authorized special allocation licenses.

REPORTS

The Advisory Committee on Sustainable Agriculture did not meet during the 2015-16 interim and therefore did not submit a report, as required by Section 4-01-24.

The State Board of Agricultural Research and Education submitted a report on its annual evaluation of research and expenditures in accordance with Section 4-05.1-19.

BUDGET SECTION

The Legislative Management's Budget Section is referred to in various sections of the North Dakota Century Code and the Session Laws of North Dakota. Although there are statutory references to the Budget Section, it is not created by statute. The Budget Section is an interim committee appointed by the Legislative Management. By tradition, the membership of the Budget Section consists of the members of the Senate and House Appropriations Committees, the Majority and Minority Leaders and their assistants, and the Speaker of the House.

Budget Section members were Senators Gary A. Lee, Bill L. Bowman, Ron Carlisle, Robert Erbele, Joan Heckaman, Ray Holmberg, Ralph Kilzer, Jerry Klein, Karen K. Krebsbach, Tim Mathern, David O'Connell, Larry J. Robinson, Mac Schneider, Ronald Sorvaag, Terry M. Wanzek, and Rich Wardner and Representatives Larry Bellew, Wesley R. Belter, Tracy Boe, Randy Boehning, Mike Brandenburg, Al Carlson, Jeff Delzer, Mark A. Dosch, Eliot Glassheim, Ron Guggisberg, Kathy Hogan, Richard G. Holman, Keith Kempenich, Gary Kreidt, Bob Martinson, Corey Mock, David Monson, Jon O. Nelson, Kenton Onstad, Chet Pollert, Mark Sanford, Jim Schmidt, Peter F. Silbernagel, Robert J. Skarphol, Roscoe Streyle, Blair Thoreson, and Don Vigesaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

The following duties assigned to the Budget Section by law or by Legislative Management directive were acted on during the 2015-16 interim:

1. **Annual report from the North Dakota State University (NDSU) Main Research Center (Section 4-05.1-05)** - This section requires an annual report to be presented to the Budget Section regarding any adjustments or increases of full-time equivalent (FTE) positions.
2. **Status of the State Board of Agricultural Research and Education (Section 4-05.1-19(10))** - This section requires a status report to be presented to the Budget Section.
3. **Annual report from the NDSU Extension Service (Section 4-08-10)** - This section requires an annual report to be presented to the Budget Section regarding any adjustments or increases of FTE positions.
4. **Higher education campus improvements and building construction (Section 15-10-12.1)** - This section requires the approval of the Budget Section or the Legislative Assembly for the construction of any building financed by donations, gifts, grants, and bequests on land under the control of the State Board of Higher Education. Campus improvements and building maintenance of more than $385,000 also require the approval of the Budget Section or Legislative Assembly. Budget Section approval can only be provided when the Legislative Assembly is not in session, excluding the 6 months prior to a regular legislative session and the 3 months following the close of a regular session. The Budget Section approval regarding the construction of buildings and campus improvements must include a specific dollar limit for each building, campus improvement, or maintenance project. If a request is to be considered by the Budget Section, the Legislative Council must notify each member of the Legislative Assembly and allow any member to present testimony to the Budget Section regarding the request. Campus improvements and building maintenance of $385,000 or less and the sale of real property received by gift or bequest may be authorized by the board.
5. **Sources of funds received for construction projects of entities under the State Board of Higher Education (Section 15-10-12.3)** - This section requires each institution under the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used to present a biennial report to the Budget Section detailing the source of all funds used in the project.
6. **State Board of Higher Education's semiannual project variance reports (Section 15-10-47)** - This section requires the Office of Management and Budget (OMB) to provide to the Budget Section upon request information relating to the State Board of Higher Education's semiannual project variance reports regarding construction projects valued at more than $250,000.
7. **Annual audits from center of excellence awarded funds under Chapter 15-69 (Section 15-69-05, effective through July 31, 2023)** - This section requires a center of excellence that is awarded funds under Chapter 15-69 to provide an annual audit report to the Budget Section on the funds distributed to the center until the completion of the Centers of Excellence Commission's postaward monitoring of the center.

8. **State Fire Marshal report on fire departments funding (Section 18-04-02)** - This section provides Budget Section receive a biennial report from the State Fire Marshal summarizing the expenditures by certified city fire departments, certified rural fire departments, and certified fire protection districts of funds received under Section 18-04-05 and the information on committed and uncommitted reserve fund balances of these entities.

9. **Game and Fish Department land acquisitions (Section 20.1-02-05.1)** - This section requires Budget Section approval is required for Game and Fish Department land acquisitions of more than 10 acres or $10,000.

10. **Legacy and Budget Stabilization Fund Advisory Board semiannual reports (Section 21-10-11)** - This section requires the Legacy and Budget Stabilization Fund Advisory Board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy and budget stabilization funds as well as recommendations presented to the State Investment Board regarding investment of funds in the legacy and budget stabilization funds.

11. **Abandoned oil and gas well plugging and site reclamation fund (Section 38-08-04.5)** - This section requires the Industrial Commission to report to the Budget Section on the status of the abandoned oil and gas well plugging and site reclamation fund and related information.

12. **Annual audits of renaissance fund organizations (Section 40-63-07(9))** - This section requires the Department of Commerce Division of Community Services to report annually to the Budget Section on the results of audits of renaissance fund organizations.

13. **Report identifying every state agency that has not submitted a claim for property belonging to that agency (Section 47-30.1-24.1)** - This section requires the Commissioner of the Board of University and School Lands to report to the Budget Section identifying every state agency that has not submitted a claim for unclaimed property belonging to that agency within 1 year of receipt of the certified mail notification.

14. **Relinquishment of agency rights to recover property (Section 47-30.1-24.1)** - This section provides each state agency that does not submit a claim for unclaimed property belonging to that agency within 1 year of receipt of the certified mail notification relinquishes its right to recover the property upon approval of the Budget Section.

15. **Change or expansion of state building construction projects (Section 48-01.2-25)** - This section provides a state agency or institution may not significantly change or expand a building construction project approved by the Legislative Assembly unless the change, expansion, or additional expenditure is approved by the Legislative Assembly or the Budget Section if the Legislative Assembly is not in session, excluding the 6 months prior to a regular legislative session and the 3 months following the close of a regular session.

16. **Job insurance trust fund (Section 52-02-17)** - This section requires Job Service North Dakota report to the Legislative Council before March 1 of each year the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next 3 years. The Legislative Management has assigned this responsibility to the Budget Section.

17. **Report on the number of employees receiving bonuses above the 25 percent limitation (Section 54-06-30)** - This section authorizes agencies to pay bonuses to not more than 25 percent of the employees employed by the agency on July 1 of each state fiscal year. Human Resource Management Services (HRMS) may approve the payment of bonuses above the 25 percent limitation, but is required to report any exceptions granted under this subsection to the Budget Section.

18. **Warrants and checks outstanding for more than 90 days and less than 3 years (Section 54-11-01)** - This section requires the State Treasurer to report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than 3 years.

19. **Irregularities in the fiscal practices of the state (Section 54-14-03.1)** - This section requires the Office of the Budget to submit a report to the Budget Section documenting:

    a. Any irregularities in the fiscal practices of the state.

    b. Areas where more uniform and improved fiscal procedures are desirable.

    c. Any expenditures or governmental activities contrary to law or legislative intent.

    d. The use of state funds to provide bonuses, cash incentive awards, or temporary salary adjustments for state employees.

20. **Transfers exceeding $50,000 (Section 54-16-04(2))** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from one fund or line item to another. Budget Section approval is not required if the transfer is necessary to comply with a court order, to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid an imminent financial loss to the state.

21. **Acceptance and expenditure of federal funds of more than $50,000 which were not appropriated (Section 54-16-04.1)**.

    a. Acceptance of federal funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to accept more than $50,000 of federal funds which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.

    b. Expenditure of federal funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to spend more than $50,000 of federal funds which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money.

22. **Acceptance of federal funds for a specific purpose or program which were not appropriated (Section 54-16-04.1(4))** - This section provides, upon approval by the Emergency Commission and Budget Section, the state may accept any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session for deposit into a special fund until the Legislative Assembly appropriates the funds.

23. **Acceptance and expenditure of other funds of more than $50,000 which were not appropriated (Section 54-16-04.2)**.

    a. Acceptance of other funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to accept more than $50,000 from gifts, grants, donations, or other sources which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money or programs. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.

    b. Expenditure of other funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to spend more than $50,000 from gifts, grants, donations, or other sources which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money or programs.

24. **Transfers of spending authority from the state contingencies appropriation exceeding $50,000 (Section 54-16-09)** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from the state contingencies line item to the appropriate line item in the appropriation of the state officer who requested the transfer. Budget Section approval is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state. A total of $700,000 was provided for the 2015-17 biennium.

25. **Housing units owned or master leased by cities, counties, school districts, or other employers of essential service workers (Section 54-17-40)** - This section requires the Housing Finance Agency to report quarterly to the Budget Section on the progress being made to reduce the overall number of units owned, master leased, or subsidized by these entities.

26. **North Dakota Outdoor Heritage Advisory Board (Section 54-17.8-07)** - This section provides Budget Section receive a report from the North Dakota Outdoor Heritage Advisory Board on a biennial basis regarding the activities of the board.

27. **Reports from state agencies that applied for federal grants estimated to be $25,000 or more (Section 54-27-27)** - This section requires OMB to present at each meeting of the Budget Section reports received from state agencies other than entities under the control of the State Board of Higher Education that have applied for federal grants estimated to be $25,000 or more.

28. **Budget stabilization fund (Section 54-27.2-03)** - This section provides any transfers from the budget stabilization fund must be reported to the Budget Section.

29. **Tobacco settlement funds (Section 54-44-04(23))** - This section requires the Director of OMB to report to the Budget Section on the status of tobacco settlement funds and related information.

30. **Form of budget data (Section 54-44.1-07)** - This section requires the Director of the Budget to prepare budget data in the form prescribed by the Legislative Council and to present it to the Legislative Assembly at a time and place set by the Legislative Council. Drafts of proposed general and special appropriations Acts embodying the budget data and recommendations of the Governor for appropriations for the next biennium and drafts of such revenues and other Acts recommended by the Governor for putting into effect the proposed financial plan must be submitted to the Legislative Council within 7 days after the day of adjournment of the organizational session. The Budget Section was assigned this responsibility.

31. **Report from the Information Technology Department (ITD) (Section 54-59-19)** - This section requires ITD to prepare and present an annual report to the Information Technology Committee and to present a summary of the report to the Budget Section.

32. **Annual audits from a center of research excellence (Section 54-65-03)** - This section requires a center of research excellence receiving funds under Chapter 54-65 to provide its annual audit on funds distributed to the center.

33. **Annual report of Standing Rock Sioux Tribe agreements (Section 57-39.8-02)** - This section requires the Standing Rock Sioux Tribe to report annually regarding any agreements entered by the Standing Rock Sioux Tribe under Chapter 57-39.8.

34. **Three Affiliated Tribes investment of oil and gas tax receipts (Section 57-51.2-02)** - This section requires the Three Affiliated Tribes to report annually regarding investment of oil and gas tax receipts in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry.

35. **Hub city annual report on use of funding received from allocations from the oil and gas gross production tax (Section 12 of 2013 House Bill No. 1358)** - This bill requires a representative of a hub city to report annually on the use of funding received from allocations from the oil and gas gross production tax under Section 57-51-15.

36. **Department of Corrections and Rehabilitation annual report on the department's prison population management plan (Section 6 of 2013 Senate Bill No. 2015)** - This bill requires the Department of Corrections and Rehabilitation to report annually on the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.

37. **State Board of Higher Education plan to reorganize the Office of the Commissioner of Higher Education (Section 4 of 2015 House Bill No. 1003)** - This bill requires the State Board of Higher Education to obtain Budget Section approval of its plan and related spending of its appropriation amount of up to $1 million, to reorganize the Office of the Commissioner of Higher Education.

38. **North Dakota State University report on the status of the Minard Hall project (Section 27 of 2015 House Bill No. 1003)** - This bill requires NDSU to report regarding the status of the Minard Hall project and approval of increased spending authorization.

39. **Industrial Commission core library expansion project (Section 25 of 2015 House Bill No. 1014)** - This bill requires the Industrial Commission to report regarding the use of funding provided for the core library expansion project, including the amounts spent to date and the amounts anticipated to be continued into the 2017-19 biennium, and on the progress of the project.

40. **Bank of North Dakota financial center project (Section 26 of 2015 House Bill No. 1014)** - This bill requires the Bank to report, contingent upon the Bank's net income exceeding $125 million for calendar year 2015, regarding the use of funding provided for the North Dakota Financial Center project, including the amounts spent to date and the amounts anticipated to be continued into the 2017-19 biennium, and on the progress of the project.

41. **Annual report from the State Board of Higher Education (Section 15 of 2015 House Bill No. 1020)** - This bill requires the board to report on FTE position adjustments made.

42. **Report from the Main Research Center regarding the flooded lands study (Section 16 of 2015 House Bill No. 1020)** - This bill requires the Main Research Center to report regarding the status of the flooded lands study and spending related to the study.

43. **Department of Veterans' Affairs service dog program (Section 4 of 2015 House Bill No. 1025)** - This bill requires the Department of Veterans' Affairs to obtain Budget Section approval of the service dog program to assist veterans with posttraumatic stress disorder.

44. **Report from the Department of Transportation on distributions to non-oil-producing counties (Section 4 of 2015 House Bill No. 1176)** - This bill requires the Department of Transportation to report to the Budget Section regarding the use of one-time funding appropriated in Section 4 of the bill, including the amounts distributed to each county, the amounts spent to date, and the amounts anticipated to be continued into the 2017-19 biennium.

45. **Report from the Commissioner of the Board of University and School Lands (Section 5 of 2015 House Bill No. 1176)** - This bill requires the Commissioner of the Board of University and School Lands to report to the Budget Section regarding the use of funding provided in Section 5 of the bill, including the amounts awarded, the amounts spent to date, and the amounts anticipated to be continued into the 2017-19 biennium.

46. **Report from OMB on salary savings for the Attorney General's office (Section 3 of 2015 Senate Bill No. 2003)** - This bill requires OMB to report in September 2015 and September 2016 to the Budget Section regarding the amount of salary savings used to reduce funding needed from the general fund and to report on the number and duration of vacant FTE positions in the Attorney General's office.

47. **Report from the Attorney General on fees in excess of campus assessments (Section 13 of 2015 Senate Bill No. 2003)** - This bill requires the Attorney General to report to the Budget Section regarding any fees charged to a campus in excess of the campus assessments listed in Section 13 of Senate Bill No. 2003 for legal fees charged by the Attorney General.

48. **Report regarding any transfers between line items and between subdivisions in excess of $50,000 (Section 3 of 2015 Senate Bill No. 2012)** - This section requires the Department of Human Services (DHS) to report to the Budget Section after June 30, 2016, on any transfers in excess of $50,000 made during the 2015-17 biennium between line items within each subdivision and between subdivisions (effective July 1, 2015).

49. **Report from the Department of Transportation on distributions to oil-producing and non-oil-producing counties (Section 2 of 2015 Senate Bill No. 2103)** - This bill requires the Department of Transportation to report to the Budget Section regarding the use of one-time funding appropriated in Section 2 of the bill, including the amounts distributed to each county, the amounts spent to date, and the amounts anticipated to be continued into the 2017-19 biennium.

50. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2016 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.

The following duties assigned to the Budget Section by law or by Legislative Management directive are scheduled to be addressed by the Budget Section at its December 2016 meeting:

1. **Report on specified commodities and services exempted from the procurement requirements of Section 54-44.4-02.2** - This section requires the Director of OMB to report to the Budget Section in December of even-numbered years on specified commodities and services exempted by written directive of the Director from the procurement requirements of Chapter 54-44.4.

2. **Review and report on budget data (Legislative Management directive)** - Pursuant to Legislative Management directive, the Budget Section is to review and report on the budget data prepared by the Director of the Budget and presented to the Legislative Assembly during the organizational session (December 2016).

The following duties assigned to the Budget Section by law or by Legislative Management directive did not require action by the Budget Section during the 2015-16 interim:

1. **Investment in real property by the Board of University and School Lands (Section 15-03-04)** - This section provides Budget Section approval is required prior to the Board of University and School Lands purchasing, as sole owner, commercial or residential real property in North Dakota.

2. **Reduction of the game and fish fund balance below $15 million (Section 20.1-02-16.1)** - This section provides the Game and Fish Department can spend money in the game and fish fund within the limits of legislative appropriations; only to the extent the balance of the fund is not reduced below $15 million, unless otherwise authorized by the Budget Section.

3. **Provision of contract services by the Life Skills and Transition Center (Section 25-04-02.2)** - This section provides, subject to Budget Section approval, the Life Skills and Transition Center may provide services under contract with a governmental or nongovernmental person.

4. **Approve expenditures from the state disaster relief fund (Section 37-17.1-27)** - This section requires Emergency Commission and Budget Section approval of expenditures from the state disaster relief fund to provide the required state share of funding for expenses associated with presidentially declared disasters in the state.

5. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - This section provides state property in a city is exempt from special assessments levied for flood control purposes unless the governing body of the city requests waiver of the exemption and the exemption is completely or partially waived by the Budget Section. The exemption does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education.

6. **Termination of food stamp program (Section 50-06-05.1(17))** - This section provides, subject to Budget Section approval, DHS may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.

7. **Termination of energy assistance program (Section 50-06-05.1(19))** - This section provides, subject to Budget Section approval, DHS may terminate the energy assistance program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.

8. **Purchase or lease of aircraft by a state agency or entity of state government (Section 54-06-37)** - This section requires Budget Section approval for state agency or other entity of state government purchase or lease of an aircraft without specific authorization from the Legislative Assembly. This section does not apply to aircraft purchased or leased by the Adjutant General's office or the University of North Dakota (UND) School of Aviation.

9. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective for which funding was provided by the Legislative Assembly.

10. **Consider authorization of additional full-time equivalent (FTE) positions (Section 54-16-04.3)** - This section provides, on the advice of OMB and the recommendation of the Emergency Commission, the Budget Section may approve the employment by a state officer of FTE positions in addition to those authorized by the Legislative Assembly.

11. **New correctional programs which exceed $100,000 of cost during a biennium (Section 54-23.3-09)** - This section requires the Director of the Department of Corrections and Rehabilitation to report to the Legislative Assembly or, if the Legislative Assembly is not in session, the Budget Section prior to the implementation of any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of $100,000 during the biennium.

12. **Capital improvements preliminary planning revolving fund (Section 54-27-22)** - This section provides before any funds can be distributed from the preliminary planning revolving fund to a state agency, institution, or department, the Budget Section must approve the request (approximately $84,000 is estimated to be available in the fund as of June 30, 2015).

13. **Cashflow financing (Section 54-27-23)** - This section provides that in order to meet the cashflow needs of the state, OMB may borrow, subject to Emergency Commission approval, from special funds on deposit in the state treasury. However, the proceeds of any such indebtedness cannot be used to offset projected deficits in state finances unless first approved by the Budget Section. Additional cashflow financing, subject to certain limitations, must be approved by the Budget Section.

14. **Purchases of "put" options (Section 54-44-16)** - This section requires OMB to report any purchases of "put" options to the Budget Section.

15. **Objection to budget allotments or expenditures (Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment, an expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.

16. **Budget reduction due to initiative or referendum action (Section 54-44.1-13.1)** - This section provides, subject to Budget Section approval, the Director of the Budget may reduce state agency budgets by a percentage sufficient to cover estimated revenue reductions caused by initiative or referendum action.

17. **Children's Services Coordinating Committee grants (Section 54-56-03)** - This section provides Budget Section approval is required prior to the distribution by the Children's Services Coordinating Committee of any grants not specifically authorized by the Legislative Assembly.

18. **Requests by ITD to finance the purchase of software, equipment, or implementation of services (Section 54-59-05(4))** - This section requires ITD to receive Budget Section or Legislative Assembly approval before executing any proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of $1 million. The department may finance the purchase of software, equipment, or implementation of services only to the extent the purchase amount does not exceed 7.5 percent of the amount appropriated to the department during that biennium.

19. **Report on reductions made in homestead property income tax credit (Section 57-38-01.29)** - This section requires the Tax Commissioner to report to the Budget Section, for review, any adjustments in the homestead property income tax credit which was available in taxable years 2007 and 2008.

20. **Consider request to reduce the commercial property income tax credit (Section 57-38-01.30)** - This section provides Budget Section approval is required for any adjustments made by the Tax Commissioner to the commercial property income tax credit which was available in taxable years 2007 and 2008.

21. **Extraterritorial workers' compensation insurance (Section 65-08.1-02)** - This section authorizes Workforce Safety and Insurance to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.

22. **Approval of North Central Research Extension Center and Williston Research Extension Center property (Section 1 of 2013 Senate Bill No. 2352)** - This bill requires Budget Section approval conveyance of the North Central Research Extension Center and Williston Research Extension Center property.

23. **State Board of Higher Education tuition increases (Section 39 of 2015 House Bill No. 1003)** - This bill requires the State Board of Higher Education to obtain Budget Section approval of any tuition rate increases over 2.5 percent by the board for the 2015-16 or 2016-17 academic years.

24. **Report from the Governor on federal funds (Section 3 of 2015 Senate Bill No. 2001)** - This bill requires the Governor's office to report to the Budget Section regarding the source, amount, and purpose of federal or other funds received by the Governor's office.

25. **Report from the State Board of Higher Education Valley City State University fine arts building (Section 8 of 2015 Senate Bill No. 2015)** - This bill requires the board to report to the Budget Section regarding the Valley City State University fine arts building project, contingent upon general fund revenues for the first 6 months or for the first year of the biennium exceeding the 2015 legislative estimates.

26. **State Board of Higher Education Dunbar Hall project (Section 8 of 2015 Senate Bill No. 2015)** - This bill requires the board to certify to the Budget Section that the Dunbar Hall project conforms to the North Dakota University System Campus Master Plan and Space Utilization study, contingent upon general fund revenues for the period beginning July 1, 2015, and ending December 31, 2016, exceeding the 2015 legislative estimates.

27. **State Water Commission transfers between project funding designations (Section 8 of 2015 Senate Bill No. 2020)** - This bill requires Budget Section approval for State Water Commission transfers between project funding designations in Section 17 of 2015 Senate Bill No. 2020.

28. **State Water Commission expenditure of additional amounts that become available in the resources trust fund and the water development trust fund in excess of the 2015-17 biennium appropriation (Section 5 of 2015 Senate Bill No. 2020)** - This bill requires Budget Section approval for State Water Commission expenditure of funds that become available in the resources trust fund and the water development trust fund in excess of 2015-17 biennium appropriations.

29. **State Water Commission revenue bonds (Section 30 of 2015 Senate Bill No. 2020)** - This bill requires Budget Section approval of the issuance of any new State Water Commission revenue bonds.

30. **Office of Management and Budget donated funds (Section 3 of 2015 Senate Bill No. 2304)** - This bill requires Budget Section approval for OMB to spend any donated funds over $1 million for upgraded fixtures and furniture for the new Governor's residence.

31. **Report from the Industrial Commission on revenue impacts in excess of $20 million (Section 1 of 2015 Senate Bill No. 2343)** - This bill provides Budget Section receive a report from the Industrial Commission regarding the fiscal impact or estimated fiscal effect on the state in excess of $20 million in a biennium of the effect of any order, regulation, or policy of the Industrial Commission to implement the provisions of Chapter 38-08, on state revenues and expenditures, including any effect on the funds of the Industrial Commission.

32. **Federal block grant hearings (2015 House Concurrent Resolution No. 3001)** - This resolution authorizes the Budget Section, through September 30, 2017, to hold any required legislative hearings for federal block grants.

OFFICE OF MANAGEMENT AND BUDGET

2013-15 Biennium General Fund Revenues and Expenditures

The Budget Section received a report from OMB on the final 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 June 30, 2015	$5,801,797,506	
Total revenues		5,801,797,506
Total available		$7,453,234,353
Less		
Legislative appropriations	($6,862,587,354)	
Contingent appropriation - Dickinson State University	(6,000,000)	
Contingent appropriation - Department of Public Instruction	(5,000,000)	
Authorized carryover from the 2013-15 biennium	(89,503,462)	

2013-15 emergency appropriations utilized in the 2011-13 biennium	163,812,041	
Supplemental appropriations	(6,084,026)	
2015-17 authority used in 2013-15 pursuant to emergency clause	(9,858,196)	
Total expenditures		(6,815,220,997)
Unspent authority returned to the general fund		92,432,516
Ending balance before transfers and adjustment		$730,445,872
Transfers and adjustments		
Transfer to budget stabilization fund	$0	
Net effect of other transfers, adjustments, and cash certifications	(916,483)	
Total transfers and adjustments		(916,483)
Ending unobligated balance - June 30, 2015		$729,529,389

2013-15 Biennium General Fund Turnback

The Budget Section received a report from OMB on the 2013-15 biennium agency unspent general fund appropriation amounts (turnback). Unspent 2013-15 biennium general fund appropriation authority (turnback) totaled approximately $92.4 million. The Budget Section learned the Tax Commissioner had turnback of $10.5 million, which primarily related to the homestead tax credit program; the Department of Public Instruction had turnback of $42 million, of which $37 million related to state aid to schools and $4 million related to rapid enrollment grants; and the Department of Human Services had turnback of $9.5 million related primarily to nursing home payments.

2015-17 Status of the General Fund

The Office of Management and Budget reported general fund revenue collections for the first 5 months of the 2015-17 biennium were $152 million less than projected resulting in OMB completing a new revenue forecast in February 2016. The revised February 2016 forecast projected 2015-17 general fund revenues to be $1.07 billion less than the original forecast. The Governor addressed the revenue shortfall using a combination of the June 30, 2017, ending balance of $331.7 million, ordering a 4.05 percent general fund budget allotment resulting in a budget reduction of $244.9 million, and transferring $497.6 million from the budget stabilization fund. As a result of the allotment, the Department of Public Instruction received a transfer of $71.7 million from the foundation aid stabilization fund to offset general fund reductions affecting state school aid transportation, transportation aid, and special education aid. In July 2016 OMB completed a second revised revenue forecast as a result of revenue collections through May 2016 being $90 million less than the revised February 2016 revenue forecast. As a result, the Governor called a special legislative session which convened on August 2, 2016, and adjourned on August 4, 2016. The Governor also ordered an additional 2.5 percent general fund budget allotment, which resulted in an additional $44.3 million being transferred from the foundation aid stabilization fund to the Department of Public Instruction. The Legislative Assembly approved, during the August 2016 special legislative session, Senate Bill No. 2379, which reduced general fund appropriations by the Governor's general fund budget allotment amount of 4.05 percent and an additional general fund reduction of 2.50 percent for a total reduction of 6.55 percent and restored 2.5 percent of the Department of Human Services' 6.55 percent general fund appropriation reduction and 1.5 percent of the Department of Corrections and Rehabilitation's 6.55 percent general fund appropriation reduction. Senate Bill No. 2379 also provided a transfer of $572.5 million from the budget stabilization fund to the general fund, and a contingent transfer of $100 million from Bank of North Dakota profits to the general fund to provide for an estimated June 30, 2017, ending general fund balance of $28,723.

At each Budget Section meeting, a representative of OMB reviewed the status of the state general fund and revenue collections for the 2015-17 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2016, and reflecting the July 2016 revised revenue forecast for the remainder of the 2015-17 biennium:

Unobligated general fund balance - July 1, 2015		$729,529,389
Balance obligated for authorized carryover from the 2013-15 biennium		147,653,143
Total beginning general fund balance - July 1, 2015		$877,182,532
Add		
General fund collections through August 2016	$2,792,721,416	
Forecasted general fund revenue for the remainder of the 2015-17 biennium	1,455,230,744	
Total revenues		4,247,952,160
Total available		$5,125,134,692
Expenditures		
Legislative appropriations - One-time	($1,173,663,758)	
Legislative appropriations - Ongoing	(4,852,498,920)	
4.05 percent budget allotment (Executive branch only)	239,120,391	
4.05 percent budget allotment (legislative branch and judicial branch)	5,749,197	

2.50 percent allotment all branches	151,154,067	
Restore DHS and Department of Corrections and Rehabilitation	(36,535,880)	
Department of Transportation contingent appropriation	(20,000,000)	
Authorized carryover from the 2013-15 biennium	(147,653,143)	
2015-17 emergency appropriations utilized in the 2013-15 biennium	9,858,196	
Total appropriations		(5,824,469,850)
Estimated ending balance before transfer from budget stabilization fund		($699,335,158)
Transfer from budget stabilization fund		572,485,453
Known turnback:		
Adjutant General - Firefighter Training Center	400,000	
Department of Public Instruction - State school aid	17,300,000	
Office of Management and Budget	1,546,000	
Total turnback		19,246,000
Estimated ending balance - June 30, 2017 - Before additional transfer from other revenue sources		($107,603,705)
Transfer from Bank of North Dakota		100,000,000
Estimated ending general fund balance - June 30, 2017 - After transfer from other revenue sources		($7,603,705)

2015-17 Biennium Actual and Revised Revenues

The Budget Section received a report from OMB in September 2016 on the actual and revised forecasted 2015-17 biennium general fund revenue compared to the July 2016 revised forecast:

Tax Type	Original Legislative Forecast	July 2016 Revised Forecast	Increase (Decrease) From Original Legislative Forecast
Sales and use taxes	$2,868,026,560	$1,863,517,574	($1,004,508,986)
Motor vehicle excise tax	314,324,000	201,543,785	(112,780,215)
Individual income tax	763,276,000	690,525,749	(72,750,251)
Corporate income tax	371,422,000	158,713,800	(212,708,200)
Insurance premium tax	91,830,364	104,935,597	13,105,233
Financial institutions tax		324,145	324,145
Oil and gas gross production tax	74,693,374	102,881,583	28,188,209
Oil extraction tax	225,306,626	197,118,417	(28,188,209)
Gaming tax	7,106,250	6,975,584	(130,666)
Lottery	15,260,000	17,210,000	1,950,000
Cigarette and tobacco tax	61,334,000	57,082,715	(4,251,285)
Wholesale liquor tax	18,995,000	18,114,988	(880,012)
Coal conversion tax	39,578,000	42,725,976	3,147,976
Mineral leasing fees	19,667,704	23,635,424	3,967,720
Departmental collections	73,883,318	78,448,832	4,565,514
Interest income	20,999,500	23,889,121	2,889,621
State Mill profits - Transfer	13,775,000	8,834,894	(4,940,106)
Major special funds - Transfer	657,000,000	657,000,000	
Other transfers	2,030,496	2,106,402	75,906
Total revenues and transfers	$5,638,508,192	$4,255,584,586	($1,382,923,606)

2015-17 Oil Tax Revenue Allocations

The Budget Section received a report from OMB in September 2016 on estimated oil tax revenue and revenue allocations for the July 2016 revised forecast. The Budget Section learned the revised estimated oil tax revenue and revenue allocations will be $530.4 million less than the original 2015 legislative forecast. The Budget Section learned the July 2016 revised forecast estimates an average North Dakota price of $42 per barrel compared to $53 in the original estimate and production ending at 900,000 barrels per day compared to 1.1 million barrels per day in the original estimate for the 2015-17 biennium.

	Amounts Shown in Millions		
	Original Legislative Forecast	July 2016 Revised Forecast[1]	Increase (Decrease) From Original Forecast
Estimated oil revenue allocations			
General fund	$300.0	$300.0	$0
Legacy fund	950.6	810.7	(139.9)
Property tax relief fund	300.0	300.0	0
Strategic investment and improvements fund	202.5	130.7	(71.8)
Political subdivisions	630.8	525.2	(105.6)
Political subdivision allocation fund	43.9	13.2	(30.7)

	Amounts Shown in Millions		
	Original Legislative Forecast	July 2016 Revised Forecast[1]	Increase (Decrease) From Original Forecast
Tribal allocations	265.1	201.1	(64.0)
Foundation aid stabilization fund	134.2	123.4	(10.8)
Common schools trust fund	134.2	123.4	(10.8)
Resources trust fund	264.2	242.7	(21.5)
Renewable energy development fund	3.0	3.0	0
Energy conservation fund	1.2	1.2	0
Oil and gas impact grant fund	140.0	74.4	(65.6)
State disaster relief fund	16.4	14.6	(1.8)
North Dakota outdoor heritage fund	27.5	19.6	(7.9)
Well plugging and site reclamation fund	10.1	10.1	0
Oil and gas research fund	10.0	10.0	0
Estimated state oil tax revenue	$3,433.7	$2,903.3	($530.4)

Preliminary 2017-19 Revenue Forecast

The Budget Section received the OMB July 2016 revenue forecast. The revised revenue forecast for the 2015-17 biennium anticipates general fund revenue will total $3.6 billion, $1.4 billion less than the original 2015-17 biennium forecast of $5.0 billion. The preliminary 2017-19 biennium revenue forecast anticipates total general fund revenue of $3.8 billion for the 2017-19 biennium, $175.5 million more than the 2015-17 biennium revised forecast, but $1.2 billion less than the original 2015-17 biennium forecast of $5 billion. The preliminary 2017-19 oil tax revenue forecast anticipates oil tax collections to total $3.5 billion for the 2017-19 biennium, $600 million more than the revised estimate for the 2015-17 biennium of $2.9 billion.

Employee Bonuses

The Office of Management and Budget reported to the Budget Section in September 2015 and September 2016 regarding the number of employees receiving bonuses exceeding the 25 percent limitation pursuant to Section 54-06-30. The Budget Section learned agencies may not give bonuses to more than 25 percent of their employees except in special circumstances approved by Human Resources Management Services (HRMS). The Budget Section learned HRMS is required to report exceptions to the Budget Section. In September 2015 OMB reported that no agencies made requests or exceeded the 25 percent limitation as of September 23, 2015. In September 2016 OMB reported the Retirement and Investment Office provided performance bonuses to 7 of its 18 FTE positions, or 39 percent, during fiscal year 2016.

Fiscal Irregularities

Pursuant to Section 54-14-03.1, the Budget Section received reports from OMB on irregularities in the fiscal practices of the state. Fiscal irregularities include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The Office of Management and Budget identified the following fiscal irregularities:

Agency	Amount	Reason
Adjutant General	$1,587.00	3 months of temporary workload increase for employee
Attorney General	$3,047.00	Employee paid $277 each month over the maximum salary range
Commission on Legal Counsel for Indigents	$1,500.00	2 months of temporary increase for service as acting supervisor of the Williston office due to a vacancy
Commission on Legal Counsel for Indigents	$1,000.00	Additional workload while transitioning from supervising attorney in Bismarck office to Deputy Director of the Commission
Department of Commerce	$3,565.00	Severance pay for downsizing due to pending budget cuts
Department of Public Instruction	$554.00	Temporary workload adjustment
Department of Trust Lands	$3,000.00	3 months of temporary workload increase due to two vacancies
DHS	$657.00	3 months of temporary increase to supervise an additional student
Indian Affairs Commission	$4,742.00	Severance pay for reductions in force due to budget allotment
Information Technology Department	$1,750.00	3.5 months of temporary workload increase to manage security division due to vacancy
Job Service North Dakota	$296,975.40	Severance pay for 41 employees due to reductions in federal funding
Job Service North Dakota	$4,195.00	Severance pay due to reduction in federal funding
North Dakota Vision Services - School for the Blind	$8,362.00	Summer contracts for additional hours
North Dakota Vision Services - School for the Blind	$4,521.97	Payment for teachers working additional days for summer contracts
Office of Administrative Hearings		Expenditures for the accrued leave line item exceeded 75 percent in the first 18 months
OMB	$44,250.00	Employee settlement agreement

Agency	Amount	Reason
Parks and Recreation Department	$13,080.00	Employee settlement agreement
Public Service Commission	$25,000.00	Severance pay for employee
State Department of Health	$577.96	2 months of temporary increase due to the maternity leave of a coworker
State Historical Society	$1,200.00	3 months of temporary workload increase to manage Fort Buford Historic Site due to illness of site supervisor
State Water Commission	$3,000.00	Settlement agreement
Tax Department	$600.00	Temporary responsibility change
Tax Department	$600.00	3 months of temporary increase due to vacancy
Tax Department	$500.00	Additional workload due to coworker on extended leave
Veterans' Home	$17,500.00	Settlement agreement

Tobacco Settlement Proceeds

Pursuant to Section 54-44-04, the Budget Section received reports on tobacco settlement proceeds received by the state. The Office of Management and Budget reported for the 2015-17 biennium to date through September 2016, approximately $62.6 million had been received by the state, and total payments received to date were $495.9 million. As directed in the initiated measure adopted by voters in November 2008, funds received in 2015 and 2016 were deposited into the tobacco settlement trust fund and the tobacco prevention and control trust fund as follows:

	Amounts Shown in Millions		
Period	Tobacco Settlement Trust Fund	Tobacco Prevention and Control Trust Fund	Total
April 2015	$19.47	$11.18	$30.65
April 2016		11.48	11.48
June 2016	20.47		20.47
Total	$39.94	$22.66	$62.6

The proceeds deposited in the tobacco prevention and control trust fund are administered by the Tobacco Prevention and Control Executive Committee, and the proceeds deposited in the tobacco settlement trust fund were allocated among the community health trust fund, common schools trust fund, and water development trust fund as follows pursuant to Section 54-27-25:

Tobacco settlement trust fund	
Community health trust fund (10 percent)	$3,974,055
Common schools trust fund (45 percent)	17,883,245
Water development trust fund (45 percent)	17,883,245
Attorney General appropriation	200,000
Total transfers from the tobacco settlement trust fund	$39,940,545
Tobacco prevention and control trust fund	22,663,243
Total tobacco settlement proceeds received during the 2015-16 interim	$62,603,788

EXECUTIVE BUDGET DEVELOPMENT - BUDGET FORMS CHANGE

The Budget Section received reports from OMB regarding the development of the 2017-19 biennium executive budget. The Budget Section learned OMB, pursuant to Sections 21 and 22 of 2015 House Bill No. 1003, is changing the 2017-19 biennium budget data to include budget information for higher education institutions using the same forms, supporting information, and documentation as other budget units. The Budget Section learned the state budget is anticipated to increase by $1 billion due to this change in reporting format. The Budget Section learned all of the FTEs authorized for the State Board of Higher Education will also be reported, which will substantially increase the 11,821.88 FTEs reported in the 2015-17 biennium. The Office of Management and Budget stated agencies will be building their 2017-19 biennium budgets starting from the original 2015-17 biennium appropriation in order to allow the agencies more flexibility to make changes.

The anticipated budget participation activities and timeline are as follows:

Activities for Development of Executive Budget	Time Period of Budget
Budget request guidelines for state agencies	April through May 2016
Preliminary revenue forecast	July through August 2016
Agency budgets submitted to OMB	July through October 2016
Budget recommendation presented to the Legislative Assembly	Early December 2016

The Budget Section learned the Governor directed agencies to develop general fund budget requests equal to 90 percent of 2015-17 ongoing appropriations, with the exception of DHS, the Department of Corrections and Rehabilitation, and the Department of Public Instruction state aid, transportation, and special education funding.

Federal Grant Applications

The Office of Management and Budget reported quarterly to the Budget Section regarding state agencies applying for federal grants estimated to be $25,000 or more pursuant to Section 54-27-27. Section 54-27-27 requires OMB to present at each meeting of the Budget Section reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be $25,000 or more. The Office of Management and Budget reported the following agencies applied for federal grants estimated to be $25,000 or more:

Agency	Time Period of Grant	Amount
June 2015		
Department of Public Instruction	3 years	$125,000/year
State Library	9 months	$40,000
September 2015		
Department of Public Instruction	October 2015 through September 2017	$148,225
Department of Agriculture	September 2015 through August 2018	$375,000
State Water Commission	October 2015 through June 2016	$26,000
December 2015		
Department of Veterans' Affairs	October 2015 through June 2016	$1,264,612
March 2016		
Housing Finance Agency	Effective 2016	$3,000,000
June 2016		
Attorney General's office	July 2016 through June 2017	$50,000
September 2016		
State Department of Health	September 2016 through August 2020	$300,000
Game and Fish Department	September 2016 through September 2018	$300,000

State Board of Higher Education Project Variance Reports

The Office of Management and Budget reported to the Budget Section regarding semiannual capital project variance reports from the State Board of Higher Education pursuant to Section 15-10-47. Section 15-10-47 requires 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 semiannual project variance reports. The reports must include:

- Name or description of the project.
- Expenditures authorized by the Legislative Assembly.
- Amount of the original contract.
- Amount of any change orders and description.
- Amount of any potential or anticipated change orders.
- Sum of the original contract, change orders, and potential or anticipated change orders and the amount by which that sum varies from the expenditures authorized by the Legislative Assembly.
- Total expenditures to date.
- Scheduled date of completion as noted in the original contract and the latest available scheduled date of completion.
- List of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project.

In September 2016 OMB reported project variance reports for University System projects for the period June 2015 through June 2016, as follows:

	Number of Projects	Adjusted Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
Projects Specifically Authorized by the Legislative Assembly				
Bismarck State College	4	$24,735,626	$21,811,584	$2,924,042
Lake Region State College	2	$7,301,617	$6,063,562	$1,238,055
Williston State College	2	$19,647,905	$18,412,263	$1,235,642
UND	16	$307,183,495	$190,364,756	$116,818,739
NDSU	12	$113,567,009	$104,048,180	$9,518,829
NDSU Extension Services	7	$28,093,000	$20,813,585	$7,279,415
North Dakota State College of Science	3	$23,242,657	$21,681,755	$1,560,902
Mayville State University	1	$5,754,484	$5,517,474	$237,010
Minot State University	6	$14,707,606	$6,380,490	$8,327,116
Valley City State University	4	$23,105,597	$18,398,760	$4,706,837
Dakota College at Bottineau	3	$11,746,983	$1,014,064	$10,732,919

	Number of Projects	Adjusted Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
Projects Approved by the State Board of Higher Education				
Bismarck State College	2	$620,000	$511,182	$108,818
UND	9	$10,890,914	$9,111,910	$1,779,004
NDSU	24	$239,825,769	$215,382,881	$24,442,888
North Dakota State College of Science	1	$380,000	$265,216	$114,784
Dickinson State University	1	$566,195	$489,720	$76,475
Mayville State University	1	$601,658	$570,989	$30,669
Minot State University	1	$384,000	$384,000	$0
Valley City State University	1	$500,000	$500,000	$0

ATTORNEY GENERAL'S OFFICE SALARY SAVINGS REPORT

The Office of Management and Budget reported to the Budget Section regarding the Attorney General's 2015-17 biennium targeted market equity increases and general fund savings through September 30, 2015. The Budget Section learned the Attorney General's office reported total general fund savings of $992,564 related to original salaries and wages funding for the period July 1, 2015, through September 29, 2016, and the savings are due to vacancies and employee turnover. The Budget Section learned the salary savings were not realized by the Attorney General's office because of a $1 million reduction in funding for salaries and wages as a result of general fund budget reductions approved during the August 2016 special legislative session.

2017 SESSION APPROPRIATION BILL FORMAT

The Budget Section considered a June 2016 interim Government Finance Committee recommendation regarding the format of appropriation bills for the 2017 legislative session. The recommendation resulted from the action by the Governor to order general fund budget allotments in February 2016. The recommendation provided for a section to be added to each appropriation bill providing a comparison of the agency's 2015-17 biennium after allotment amount to the 2017-19 biennium general fund appropriation. Because of legislative action reducing agency general fund budgets in the August 2016 special legislative session, the Budget Section, pursuant to Section 54-44.1-07, directed that proposed agency and institution appropriations bills introduced for consideration by the 65th Legislative Assembly include, as the agency or institution's base level funding, the agency or institution's original ongoing appropriations for the 2015-17 biennium adjusted by changes to ongoing appropriations made as a result of legislative action during the August 2016 special legislative session.

NORTH DAKOTA UNIVERSITY SYSTEM

State Board of Higher Education Reporting

The Budget Section received a report from OMB regarding the change in the number of FTE employees and special funding reported as part of the budget due to new reporting requirement for the State Board of Higher Education pursuant to Sections 21 and 22 of 2015 House Bill No. 1003. The Budget Section learned the number of FTEs reported will increase by 4,294.36, from 2,297.00 to 6,591.36, and the special funds amount reported will increase by $1.8 billion.

State Board of Higher Education Reorganization of North Dakota University System Office Plan

The University System requested, but later withdrew its request for the use of $1 million contingent appropriation pursuant to Section 4 of 2015 House Bill No. 1003. The University System request was designed to improve the effectiveness of the University System office and would have included the following implementation options:

Full Implementation	Partial Implementation
• Help students graduate faster and to help serve the state's workforce needs ($360,000); • Correct policy inconsistencies ($368,000); and • Increase operational efficiency ($265,000).	• Help students graduate faster and to help serve the state's workforce needs ($200,000); • Correct policy inconsistencies ($150,000); and • Increase operational efficiency ($50,000).

The Budget Section postponed action regarding the request and as a result of the Governor's 4.05 February 2016 percent general fund budget allotment the University System decided to utilize the $1 million contingent appropriation to meet a portion of its 4.05 percent general fund budget allotment and withdrew its request.

Capital Projects

The University System requested Budget Section approval relating to the following capital construction project request:

Williston State College

- **Workforce training project** - Pursuant to Section 15-10-12.1 and Section 48-01.2-25, the Budget Section **approved** an increase in scope and budget of the workforce training project by $150,000, from $8,238,267 to $8,388,267 and a change in the source of funding from revenues received from training to using $800,000 of the $1.5 million provided for deferred maintenance and extraordinary campus needs in Section 33 of 2015 House Bill No. 1003.

Local Funds Report

Pursuant to Section 15-10-12.3, the Budget Section received a report on sources of funds received for construction projects of entities under the State Board of Higher Education.

NORTH DAKOTA STATE UNIVERSITY

Minard Hall Project

North Dakota State University reported to the Budget Section regarding the status of the Minard Hall project pursuant to Section 27 of 2015 House Bill No. 1003. North Dakota State University reported on December 16, 2015, that it spent $4,654,854 as a result of the building collapse and that NDSU agreed to a settlement of $3,020,000 resulting in $1,634,854 of unreimbursed costs. The Budget Section learned that on December 10, 2015, the State Board of Higher Education approved NDSU's request to seek a deficiency appropriation from the 2017 Legislative Assembly for the unreimbursed costs. The Budget Section learned that of the $4.7 million in costs incurred due to the collapse, $3.8 million is related to costs for repairs and $900,000 is related to costs of forensic studies, expert witnesses, and legal assistance.

WILLISTON STATE COLLEGE

Community Wellness Center

The Budget Section learned that Williston State College requested and received approval from the State Board of Higher Education to increase student fees for the college's new community wellness center. The State Board of Higher Education informed the Budget Section that it did not intend to circumvent legislative intent by approving the fee increase, but believed the increase was necessary and the board will continue to review the fees being charged and if possible, reduce fees for the next academic year. The Budget Section learned the community wellness center is located on campus and the construction was valued at $76 million, a joint powers and operating agreement between State Board of Higher Education and the Williston Park District to facilitate the construction and operations of the wellness center had been signed, the use of student fees to support the operation of the wellness center is included in the operating agreement between the board and the Williston Park District, and the joint powers agreement required an operating agreement in which student fees would be used to support the operation of the wellness center. The Budget Section learned the joint powers agreement was modeled after an agreement entered by Bismarck State College in 2008 and Valley City State University in 2015. The Budget Section learned the fee structure was approved by the student government, the activity board, and at an open student forum.

NORTH DAKOTA STATE UNIVERSITY MAIN RESEARCH CENTER

Flooded Lands Study

The Agricultural Experiment Station reported to the Budget Section regarding the flooded lands study relating to the recovery of grasslands affected by Souris River flooding pursuant to Section 16 of 2015 House Bill No. 1020. The Budget Section learned that Souris River flooding caused $5 million in damages to landowners and the study will continue throughout 2015-17 biennium.

ANNUAL FULL-TIME EQUIVALENT POSITION REPORT

Agricultural Experiment Station

The Agricultural Experiment Station reported to the Budget Section regarding FTE position adjustments made at the Agricultural Experiment Station main research center and branch research centers pursuant to Section 4-05.1-05. The Budget Section learned that the main research center added 5.00 FTE positions between July 1, 2014, and June 30, 2015, and 1.30 FTE positions since June 30, 2015, for a total of 360.15 FTE positions as of November 30, 2015, and the branch research centers added 2.00 FTE positions between July 1, 2014, and June 30, 2015, and reduced .25 FTE positions since June 30, 2015, for a total of 115.69 FTE positions as of November 30, 2015, and the Agronomy Seed Farm did not change any FTE positions.

Northern Crops Institute

The Northern Crops Institute reported to the Budget Section regarding the FTE position adjustments made at the Northern Crops Institute pursuant to Section 4-05.1-05. The Budget Section learned the Northern Crops Institute has had 12 FTE positions filled over the past two bienniums with no adjustments.

North Dakota State University Extension Service

The Extension Service reported to the Budget Section regarding the FTE position adjustments made at the Extension Service pursuant to Section 4-08-10. The Budget Section learned the Extension Service added 1.41 FTE positions between July 1, 2014, and June 30, 2015, and reduced .45 FTE positions since June 30, 2015, for a total of 264.87 FTE positions as of November 30, 2015.

Upper Great Plains Transportation Institute

The Upper Great Plains Transportation Institute reported to the Budget Section regarding the FTE position adjustments made for the Upper Great Plains Transportation Institute pursuant to Section 15 of 2015 House Bill No. 1020. He said the Upper Great Plains Transportation Institute added .50 FTE positions between July 1, 2014, and June 30, 2015, and 2.00 FTE positions since June 30, 2015, for a total of 57.48 FTE positions as of November 30, 2015.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION

Status Report

The State Board of Agricultural Research and Education inform to the Budget Section on the status of board activities pursuant to Section 4-05.1-19(10). The board reported information regarding the Agricultural Experiment Station and the Extension Service budget along with activities of the board, its initiatives and projects, including determining the cause of adverse economic impacts on crops and livestock produced in the state and the development of strategies for the provision of research solutions and resources to negate adverse economic impacts on crops and livestock produced in the state.

DEPARTMENT OF COMMERCE

Centers of Excellence and Centers of Research Excellence Audit and Monitoring Reports

The Budget Section received monitoring and annual audit reports of centers of excellence and centers of research excellence pursuant to Sections 15-69-05 and 54-65-03. The Department of Commerce reported $57.8 million of state centers of excellence funds and $214.2 million in nonstate funds have generated a total economic impact of an estimated $751 million. The Department of Commerce also reported each centers of excellence award is monitored for a period of 6 to 10 years, and centers are reviewed after a period of at least 3 full fiscal years. The review includes determining whether the centers are having the desired economic benefits. The Department of Commerce reported that centers of excellence and centers of research excellence participants and the Centers of Excellence Commission assessment include:

Center of Excellence and Center of Research Excellence	Commission's Assessment
NDSU - Center for Advanced Electronics Design and Manufacturing	No findings identified
NDSU - Center for Surface Protection	No findings identified
Lake Region State College - Dakota Precision Ag Center	No findings identified
NDSU - Center for Ag Biotechnology: Oilseed Development	No findings identified
UND Research Foundation - Center of Excellence in Life Sciences and Advanced Technology	No findings identified
UND - Unmanned Aircraft Systems Center of Excellence	No findings identified
Dickinson State University Strom Center for Entrepreneurship and Innovation - Institute for Technology and Business	Report not received
NDSU - Center for Biopharmaceutical Research and Production	No findings identified
NDSU - Center for Integrated Electronic Systems	No findings identified
NDSU - Center for Sensors, Communication, and Control	No findings identified
UND - Center of Excellence in Space Technology and Operations	No findings identified
UND Research Foundation - Center for Passive Therapeutics	No findings identified
UND - Petroleum Research, Education, and Entrepreneurship Center	Three findings identified
UND - SUNRISE BioProducts Center of Excellence for Chemicals, Polymers, and Composites from Crop Oils	No findings identified
NDSU - Center for Advanced Technology Development and Commercialization	No findings identified
Dakota College at Bottineau - Entrepreneurial Center for Horticulture	One finding identified
UND - Unmanned Aircraft Systems Software Curriculum and Development	One finding identified
UND - Unmanned Aircraft Systems Research, Education, and Training Enhancement Grant	One finding identified
UND - Law Enforcement and Public Safety Agency Small Unmanned Aircraft Systems Course	No findings identified
UND Certified Flight Instructor - V2 Aerospace, Inc., Technical Assistance Request	No findings identified
NDSU - Material and Nanotechnology Center	No findings identified
NDSU - Research 1 Expansion	No findings identified
UND - Grand Forks Air Force Base Realignment Business Transition	One finding identified
UND Center for Innovation - Certificate Programs for Motion Video and Activity-Based Intelligence Analysis	No findings identified
NDSU - Center for Life Sciences Research and Applications	No findings identified
UND - Center for Avian Therapeutics for Infectious Diseases	No findings identified
NDSU - Center for Biobased Materials, Science and Technology	No findings identified
UND - Limited Deployment Cooperative Airspace Project	No findings identified
NDSU - Limited Deployment Cooperative Airspace Project	No findings identified

Center of Excellence and Center of Research Excellence	Commission's Assessment
UND - Global Hawk Sensor Operator Part Task Trainer	No findings identified
UND Center for Innovation Foundation - Joint Distributed Common Ground System	No findings identified
UND - Unmanned Aircraft Systems Airspace Initiative (Phase 2)	No findings identified
UND - Airspace Integration Team - Unmanned Aircraft Systems National Test Site (Phase I, II, III)	No findings identified
UND Certified Flight Instructor - Enhanced Use Lease for Grand Forks Air Base III	No findings identified
UND Certified Flight Instructor - Enhanced Use Lease for Grand Forks Air Base IV	One finding identified
Bismarck State College - National Energy Center of Excellence	No longer reporting
UND Energy and Environmental Research Center - National Center for Hydrogen Technology	No longer reporting
Williston State College - Petroleum Safety and Technology Center	No longer reporting
Valley City State University - Enterprise University	No longer reporting

Renaissance Fund Organizations Annual Audits

The Department of Commerce reported on the annual audits of renaissance fund organizations pursuant to Section 40-63-07(9). The department reported 58 cities have a renaissance zone, 8 of which have established renaissance fund organizations. Approximately $5.6 million of tax credits have been claimed and approximately $4.9 million of tax credits remain available as of September 2016.

The department reported the following tax credit summary to the Budget Section in September 2016:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available[1]	
			Committed	Uncommitted
Category 1 - (0 to 5,000 population)	$2,135,866	$538,366[2]	$465,0000	$1,132,500
Category 2 - (5,001 to 30,000 population)	250,000	250,000[3]		
Category 3 - (Over 30,000 population)	8,114,134	4,835,000[4]	1,763,750	$1,515,384
Total	$10,500,000	$5,623,366	$2,228,750	$2,647,884

[1]Of the $4,876,634 credits available, $563,750 reserved for Fargo, $465,000 reserved for Hope, and $1.2 million for Grand Forks. If not claimed in a timely manner, the reserved credits can be used by other renaissance fund organization cities.

[2]Category 1 cities - Casselton ($37,500), Hazen ($15,500), Mayville ($162,650), and Hope ($322,716).

[3]Category 2 cities - Jamestown ($150,000) and West Fargo ($100,000).

[4]Category 3 cities - Fargo ($4,835,000).

BANK OF NORTH DAKOTA

North Dakota Financial Center Project

The Budget Section received a report in March 2016 from the Bank of North Dakota regarding the status of the North Dakota Financial Center project pursuant to Section 16 of 2015 House Bill No. 1014. The Bank reported net income for the Bank of $131 million for calendar year 2015, $6 million more than the $125 million net income requirement included in Section 16 of 2015 House Bill No. 1014. The Budget Section learned the anticipated cost of the building is $17 million. The new building is anticipated to house the Department of Commerce, the Housing Finance Agency, and the Department of Financial Institutions. JLG Architects is the architectural firm leading the design process and JE Dunn Construction was selected as the construction manager at risk. The Budget Section learned the $17 million is part of the assets of the Bank and once the building is complete, it will remain an asset of the Bank. Although preliminary planning had begun on the project the Budget Section learned the Industrial Commission delayed any further action on the project due to the general fund revenue shortfall, which resulted in general fund budget allotments.

GAME AND FISH DEPARTMENT

Funds Provided to Other Organizations

The Budget Section received a report from the Game and Fish Department regarding funds the department provides to other organizations, and the status of the department employees working in other entity offices. The Budget Section learned the department cost-shares two farm bill biologists with nongovernmental entities and that the department began the cooperative agreements for the farm bill biologist in 2008 and 2009. The department explained that the biologists are 50 percent funded by the Game and Fish Department and are located in Natural Resources Conservation Service offices to assist and promote farm bill conservation programs, such as Conservation Reserve Program, Wetland Reserve Program, Quality Incentive Program, and Conservation Stewardship Program and others.

Land Acquisition Requests

Pursuant to Section 20.1-02-05.1, the Budget Section approved the following land acquisition requests from the Game and Fish Department:

Burke County

The purchase of 39.8 acres adjacent to existing wildlife management areas in Burke County. The purchase price of the land was $61,292 ($1,540 per acre).

McLean County

The purchase of 255 acres adjacent to existing wildlife management areas in McLean County. The purchase price of the land was $1,113,000 ($4,364.71 per acre).

DEPARTMENT OF TRUST LANDS

State Agency Unclaimed Property

The Budget Section received reports from the Department of Trust Lands regarding state agencies that have not submitted a claim for unclaimed property belonging to that agency pursuant to Section 47-30.1-24.1. The Budget Section learned the North Dakota Uniform Unclaimed Property Act has been in effect since 1975, and since that time, North Dakota state agencies have been reported as being owners of unclaimed property. The 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides within 1 year of receipt of state agency property, the administrator of unclaimed property shall notify the agency by certified mail. The Commissioner of the University and School Lands is to present a report to the Budget Section identifying every state agency that has not submitted a claim for property belonging to that agency within 1 year of the receipt of the date of the certified mail receipt, and upon approval of the Budget Section, the agency relinquishes its right to recover its property.

The Department of Trust Lands reported during the 2015-16 interim, its Unclaimed Property Division identified 7 state agencies with unclaimed properties with a total value of $16,673 as of September 2015 and 11 state agencies with unclaimed properties with a total value of $3,246 as of June 2016.

The Budget Section pursuant to Section 47-30.1-24.1 approved the lists of state agencies relinquishing their rights to recover unclaimed property in September 2015 and in June 2016.

Use of Oil and Gas Impact Grant Funds

The Budget Section received reports from the Department of Trust Lands on the oil and gas impact grant fund, the amounts awarded from the fund, 2015-17 biennium amounts spent, and the amounts anticipated to be continued into the 2017-19 biennium pursuant to Section 5 of 2015 House Bill No. 1176. The department reported that the 2015 Legislative Assembly appropriated $140 million to the Department of Trust Lands for oil and gas impact grants and designated $132.5 million for specific projects and the department had awarded $42.6 million as of January 2016 of which $626,724 was canceled or reduced due to fund revenues being less than anticipated. The Budget Section learned the July 2016 revised revenue forecast projected that the oil and gas impact grant fund would receive $73.4 million for the 2015-17 biennium and through September 2016 the fund has received $38.4 million in revenue. If current biennium funding received meets total program grant obligations, the department anticipates distributing $7.3 million of grant suspensions. The Budget Section learned that $60.3 million in legislative designations will likely not be awarded during the 2015-17 biennium.

JOB SERVICE NORTH DAKOTA

Status of the Unemployment Trust Fund and the Modified Average High-Cost Multiplier

The Budget Section received a report in March 2016 from Job Service North Dakota on the status of the unemployment trust fund and the targeted modified average high-cost multiplier pursuant to Section 52-02-17. As of December 31, 2015, the balance of the unemployment trust fund was $120.7 million, $48.4 million below the projected 2015-17 biennium target balance of $169.1 million. The average high-cost multiplier for the period was 0.63, 0.37 below the projected 2015-17 biennium target of 1.0. The Budget Section learned that with the increase in the number of unemployment insurance claims, the agency currently projects the June 30, 2017, balance of the fund to be $72.5 million, $112.2 million below the projected 2015-17 biennium target balance of $184.7 million. Job Service North Dakota reported the maximum weekly wage rate is $633. An individual can draw up to 26 weeks of benefits and the current average for benefits being paid is 11 weeks.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

Pursuant to Section 54-59-19, the Budget Section received the ITD 2014-15 and 2015-16 annual reports. The Information Technology Department reported three strategic areas for ITD:

- "Cloud" Services - Many agencies contract with private vendors for "cloud" services. The Information Technology Department assists the agencies by reviewing the security at the vendor's data center, the backup policies, and disaster recovery.

- Security - ITD is involved in preventing and investigating security breaches.
- Business process analysis - ITD has started doing business process analysis for IT projects in order to better control the expectations of its clients and to develop a better project plan, and to develop a more accurate completion date.

DEPARTMENT OF HUMAN SERVICES

Transfers in Excess of $50,000

The Budget Section received a report from DHS regarding transfers in excess of $50,000 pursuant to Section 3 of 2015 Senate Bill No. 2012. The Budget Section learned through September 2016, the department had the following transfers between line items and between subdivisions of Senate Bill No. 2012 in excess of $50,000:

Transfers	General Fund	Total Funds	Explanation
Centralization of department functions	$3,200,629	$3,237,809	Funds were transferred from the human service centers and institutions line items in the field services program to the salaries and wages line item and the operating line item in the management program. The supervision of human resources and fiscal administration functions in the department were centralized.
Certified medical coder	$72,233	$72,233	Funds were transferred from the salaries and wages line item in the management program to the human service centers and institutions line items in the field services program. A certified medical coder was assigned to the human service centers.
Aging and Disability Resource LINK	$99,414	$166,540	Funds were transferred from the human service centers and institutions line items in the field services program to the salaries and wages line item and the operating line item in program and policy. The transfer was for the Aging Services Division for Aging and Disability Resource LINK information and assistance, and to assist with central intake for vulnerable adult protective services.

Status of Medicaid Management Information System

The Budget Section received a report from DHS on the status of the Medicaid management information system computer project. The department reported the project was implemented in October 2015 and had completed 37 provider payment cycles as of June 2016. The total cost of the project was approximately $97.9 million, of which the federal share is $85.5 million. The Budget Section learned 3.2 million claims had been received and processed. The department is working with Xerox on outstanding issues affecting provider payments and DHS is resolving known system issues related to primary care provider referrals, recipient liability, member eligibility, and mass adjustments. The department reported 52,000 claims in suspense as of June 2016, totaling approximately $10 million, with approximately 50 percent of these claims being older than 60 days.

LEGACY AND BUDGET STABILIZATION FUND

Advisory Board Report

The Budget Section received reports from the Legacy and Budget Stabilization Fund Advisory Board regarding the investment policies for the legacy fund and budget stabilization fund pursuant to Section 21-10-11. Section 21-10-11 requires the advisory board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy fund and budget stabilization fund as well as recommendations presented to the State Investment Board regarding investment of funds in the legacy fund and budget stabilization fund.

Legacy Fund

As of January 2015, the board's recommended asset allocation plan was fully implemented for the legacy fund, including 30 percent broad United States equity, 20 percent broad international equity, 35 percent fixed income, 5 percent core real estate, and 10 percent diversified real assets. The legacy fund's 1-year net return as of March 31, 2015, was 5.72 percent compared to approximately a 1 percent return when it was previously invested in fixed income. The Budget Section learned the market value of the legacy fund was $3,328.6 million as of June 30, 2015. The market value of the legacy fund as of March 31, 2016, was $3.7 billion and fund investments have averaged a return of 2.57 percent net of fees since inception. The legacy fund balance in June 2017 is projected to be $4.3 billion.

Budget Stabilization Fund

The Budget Section learned as of March 31, 2016, the balance in the budget stabilization fund was $579.8 million, of which $8.9 million is invested in cash equivalents, $89.8 million is invested in certificate of deposits with the Bank of North Dakota, and $481.1 million is invested in short-term fixed income securities with Babson Capital Management and JP Morgan Chase & Co. The Budget Section learned that the Governor ordered and the Legislative Assembly approved,

in the August 2016 special legislative session, the entire balance in the budget stabilization fund is to be transferred to the general fund due to general fund revenue shortfalls.

STATE TREASURER

Outstanding Warrants and Checks

The Budget Section received reports from the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years pursuant to Section 54-11-01. Section 54-11-01 provides the State Treasurer report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than 3 years. The State Treasurer provided reports to the Budget Section in September 2015 and September 2016. The Budget Section learned items reported may be the result of money which has not been received by the proper recipient or checks that have not been cashed. Annually, checks more than 3 years old are transferred to the Department of Trust Lands as unclaimed property.

The State Treasurer reported in September 2015 the number of checks outstanding increased by 5 percent from state fiscal year 2014 and a total of $3.6 million in outstanding checks existed for fiscal years 2013, 2014, and 2015, which is an increase of 11.9 percent from fiscal year 2014 to fiscal year 2015. The State Treasurer provided a listing of 3,181 outstanding checks which were sent to the Unclaimed Property Division of the Department of Trust Lands in October 2015 totaling $482,506.

The State Treasurer reported as of September 2016, the number of checks outstanding increased by 12.1 percent from state fiscal year 2015 and a total of $5.1 million in outstanding checks existed for fiscal years 2014, 2015, and 2016, which is an increase of 1.75 percent from state fiscal year 2015 to state fiscal year 2016. The State Treasurer provided a listing of 3,577 outstanding checks which were sent to the Unclaimed Property Division of the Department of Trust Lands in October 2016 totaling $557,486.

HOUSING FINANCE AGENCY

Housing Units Owned or Master Leased for Essential Service Workers

The 2013 Legislative Assembly appropriated $15.4 million from the general fund for transfer to the housing incentive fund and provided an aggregate tax credit of $20 million for the purpose of assisting developing communities to address an unmet housing need or alleviate a housing shortage. Pursuant to Section 54-17-40, the Budget Section received reports regarding the progress being made to reduce the overall number of housing units owned, master leased, or subsidized by cities, school districts, or other employers of essential service workers. In June 2016 the Budget Section learned that funding provided was in the form of a 0 percent forgivable loan subject to the units being retained as affordable housing for a minimum of 15 years. If rental rates increase to allow the loan to be repaid, payments will be required. The Housing Finance Agency reviews the financial statements of the units which received the 0 percent loan to verify that income is not sufficient to repay the loan. The Housing Finance Agency requires an annual monitoring fee of $25 for each affordable housing unit designated for affordable housing. The Budget Section learned the fees cover inspection and auditing expenses incurred by the agency. The revenues from fees are deposited into the housing incentive fund.

In September 2016 the Housing Finance Agency reported the number of housing units owned by political subdivisions decreased by 80, master leased units decreased by 179, and an additional 10 rent subsidies were being provided compared to the report in September 2015. The Budget Section learned the 2016 statewide housing needs assessment study indicates housing needs will increase by 21 percent, or by 76,490 housing units, from 2014 to 2029. The study indicated an acceptable cost burden for low-income individuals is 30 percent of income. For example, an individual would need to make $15.66 per hour in North Dakota to pay for a two-bedroom apartment at a cost of $814 per month to be within the 30 percent guideline. The Budget Section learned that without state funding, it may not be possible to meet the state's need for housing units as only 150 to 175 units can be produced per year at current funding levels.

DEPARTMENT OF TRANSPORTATION

One-Time Funding Report

The Budget Section received a report from the Department of Transportation regarding one-time state funding for road improvements for the 2015-17 biennium. The Budget Section learned the department has planned $822 million of construction work on state highways, city, and county roads, of which $600 million was bid through the department and $222 million was bid through counties. The Budget Section learned that $112 million from the general fund, provided in 2015 House Bill No. 1176, was reduced by 6.55 percent because of legislative action during the August 2016 special legislative session to $104,664,000. The Budget Section learned that of the $104.7 million available from 2015 House Bill No. 1176, $56.9 million remains to be expended and of the $352 million from the strategic investment and improvements fund, provided in 2015 Senate Bill No. 2103, $47.8 million remains to be expended. The department reported that it is anticipating $40 million more in additional federal highway funds through the federal Fixing America's Surface Transportation Act for the 2017-19 biennium.

ATTORNEY GENERAL'S OFFICE

The Budget Section received a report from the Attorney General's office indicating it has not assessed any additional legal fees to higher education institutions in excess of those listed in Section 13 of 2015 Senate Bill No. 2003.

HUB CITY REPORTS

The Budget Section received reports from hub cities in December 2015 regarding each city's use of funds received from hub city allocations from the oil and gas gross production tax under Section 57-51-15.

Williston

The Budget Section learned Williston is using the funds for infrastructure projects, including road projects and water and sewer projects. The 2013-15 biennium gross production tax revenues were $62.6 million and infrastructure construction expenditures were $72.2 million and the city's debt has increased from $131.7 million in 2014 to $214.8 million in 2015. The Budget Section learned the city's property taxes have increased due to increases in property valuations and the city did not budget a tax increase in the base budget for the current year.

Dickinson

Dickinson reported that increases in the hub city allocations from oil and gas gross production tax have been vital to Dickinson and the decrease in oil activity has not reduced the need for investment in western North Dakota. The citizens of Dickinson have incurred $4,500 of debt per capita in the past 3 years totaling $122 million in long-term debt with annual debt obligations of over $5 million and Dickinson has made $55.4 million in investments from September 2014 through August 2015, receiving $15.5 million in revenue from the oil and gas gross production tax. The Budget Section learned that the funds are being used for 16 civil service buildings and infrastructure projects, including a public safety facility, a salt brine storage building, road projects, a public works facility, a water reclamation facility, and water and sewer projects.

Minot

The Budget Section learned Minot's debt per capita has increased from $2,017 to $3,678 and hub city funding has been used for sewer system upgrades and improvements and airport-related projects.

DEPARTMENT OF VETERANS' AFFAIRS

Contingent Funding Request for Service Dog Program

The Budget Section approved the Department of Veterans' Affairs request to spend up to $25,000 of contingent funding from the general fund for the service dog program pursuant to Section 4 of 2015 House Bill No. 1025. The Budget Section learned the department had expended the initial $25,000 appropriated from the general fund to place two service dogs with veterans in the 2015-17 biennium, and four more veterans are qualified and ready to be placed with service dogs. The department reported that the contingency funding will allow two of the four qualified veterans to receive service dogs.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Inmate Report

Pursuant to Section 6 of 2013 Senate Bill No. 2015, the Budget Section received annual reports on the Department of Corrections and Rehabilitation's prison population management plan, inmate admissions, and the number of inmates not admitted after sentencing. The Department of Corrections and Rehabilitation reported in September 2015 that the department had not refused to admit any inmates. The Budget Section learned the department has budgeted $75 per day to house inmates out of state, and currently anticipates housing between 100 and 200 inmates out of state. The department reported in September 2016 that the department has not refused to admit any inmates and the 2015-17 biennium average male inmate population for all facilities was 1,567. The 2015-17 biennium average female inmate population for all facilities was 223. The department reported the average length of time individuals are in county jails is 90 days. The Budget Section learned approximately 7,600 individuals are under supervision, of which roughly 900 are on parole.

INDUSTRIAL COMMISSION

Abandoned Oil and Gas Well Plugging and Site Reclamation Fund

Pursuant to Section 38-08-04.5, the Budget Section received a report on the balance of the abandoned oil and gas well plugging and site reclamation fund and expenditures. The Industrial Commission reported as of June 27, 2016, the balance of the abandoned oil and gas well plugging and site reclamation fund was $12.2 million. Revenues and expenditures of the fund are as follows:

Description	Actual Balances - Through June 27, 2016 (Amounts in Millions)
Balance - July 2013	$2.3
Revenue	15.8
Expenditures	(5.9)
Balance - June 2016	$12.2

Core Library Expansion Project

The Department of Mineral Resources reported to the Budget Section regarding the use of funding provided for the core library expansion project, including the amounts spent to date and the amounts anticipated to be continued into the 2017-19 biennium, and on the progress of the project pursuant to Section 25 of 2015 House Bill No. 1014. The Budget Section learned the project is being conducted under the construction manager at-risk process and has a guaranteed maximum price of $13,633,322 of which $7,560,884 has been spent as of June 27, 2016. The department expects to have $197,027 in unexpended funds and that no funds are anticipated to be continued into the 2017-19 biennium.

NORTH DAKOTA OUTDOOR HERITAGE ADVISORY BOARD

Activities to Date

Pursuant to Section 54-17.8-07, the North Dakota Outdoor Heritage Advisory Board reported to the Budget Section a summary of the board's activities to date. In September 2015 the North Dakota Outdoor Heritage Advisory Board reported two additional grant rounds were held during the 2013-15 biennium, on November 1, 2014, and April 1, 2015. The Budget Section learned the Industrial Commission approved an additional 35 projects totaling $9.6 million in the two additional rounds to provide a total of $21 million in grants for the 2013-15 biennium. The board has established dates for four rounds of applications during the 2015-17 biennium: October 1, 2015; March 1, 2016; November 1, 2016; and May 1, 2017.

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Investment of Oil and Gas Tax Receipts

Pursuant to Section 57-51.2-02, the Three Affiliated Tribes of the Fort Berthold Reservation reported to the Budget Section fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects completed by the Three Affiliated Tribes using oil and gas tax receipts. The Budget Section learned fiscal year 2015 expenditures were $106,236,000, which include expenditures for environmental protection ($2,212,000), infrastructure ($91,233,000), and public safety ($12,791,000). The Three Affiliated Tribes anticipates $61.2 million in expenditures and $147.2 million in revenue for fiscal year 2016. The Budget Section learned the federal Bureau of Reclamation water projects are ongoing projects and it is anticipated that all projects will be completed by the end of fiscal year 2016. The Three Affiliated Tribes are investing in programs regarding drug addiction, including a new drug treatment facility, which is anticipated to be completed in 2017 and is a joint project with the federal Indian Health Services.

STATE FIRE MARSHAL

Fire Department Funding Report

Pursuant to Section 18-04-02, the State Fire Marshal reported to the Budget Section expenditures by certified fire departments, district funds received from the insurance tax distribution fund, and reserve fund balances. The State Fire Marshal reported a certification packet was mailed in August 2015 to 370 fire service entities within the state. The State Fire Marshal reported of the 320 reports that have been received, insurance tax distribution funds of $6.8 million were received and $5.6 million has been expended. The State Fire Marshal reported in September 2016 that 35 fire departments had uncommitted funds of $160,044 remaining of the $6,780,299 that was available for 2014. The Budget Section learned that only 59 of 321 fire departments reported 2014 data regarding fires to the State Fire Marshal's office and grant funds may be withheld from fire departments that fail to report required data.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

Background

The Legislative Council staff contacted state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings. The Budget Section learned the results of the survey revealed one block grant--the community services block grant administered by the Department of Commerce Division of Community Services--requires legislative hearings. A summary of the proposed use and distribution plan for the block grant will be provided by the Department of Commerce as part of the agency's appropriations hearing during the 2017 legislative session. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2017 legislative session.

Recommendation

The Budget Section recommends Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 65th Legislative Assembly through September 30, 2019.

FEDERAL FUNDS

The Budget Section reviewed a report from the Legislative Council on federal funds anticipated to be received by state agencies and institutions for the bienniums ending June 30, 2017, and June 30, 2019. The report indicated agencies estimate $3.5 billion of federal funds will be received during the 2015-17 biennium, $94.8 million less than appropriated. Agencies estimate $3.7 billion of federal funds will be received for the 2017-19 biennium, $234.3 million more than is estimated to be received during the 2015-17 biennium.

The Budget Section reviewed a memorandum on the largest variances by agency for the 2015-17 biennium between federal funds appropriated and federal funds estimated to be received. The memorandum provides information regarding the major variances experienced by agencies during the 2015-17 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2017-19 biennium compared to the 2015-17 biennium.

LEGISLATIVE COUNCIL STAFF REPORTS

The Budget Section received the following reports prepared by the Legislative Council staff:

- *Budget Section Duties and Responsibilities for the 2015-17 Biennium*. The report provides information detailing the duties and responsibilities of the Budget Section for the 2015-16 interim.
- *64th Legislative Assembly Legislative Changes to State Agency Budgets for the 2015-17 Biennium*. The report provides information on legislative changes to agency budgets and is a compilation of the statements of purpose of amendment for action taken on appropriation bills during the session.
- *64th Legislative Assembly State Budget Actions for the 2015-17 Biennium*. The report provides information on the 2015-17 state budget, FTE positions, ongoing and one-time general fund appropriations, federal fiscal stimulus funding, one-time funding, major programs, and related legislation for each state agency. The report also includes an analysis of major special funds and statistical information on state appropriations.
- *64th Legislative Assembly Budget Status Report for the 2015-17 Biennium*. The report provides information on the status of the general fund and estimated June 30, 2017, ending balance, legislative changes to general fund revenues, and legislative appropriation changes.
- *2015-17 Biennium Report on Compliance with Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the 2015 Legislative Assembly for various agencies. The report contains information regarding the status of major state trust funds.
- *2015* and *2016 North Dakota Finance Facts*. The annual pocket brochure contains information on economic statistics, the state budget, K-12 education, higher education, human services, corrections, economic development, and transportation.
- *2015-17 Biennium Revenue - Monthly Summary*. The report provides general fund revenue and oil tax revenue collections and allocations.
- *2015-17 Biennium General Fund Budget - Current Status and "What If" Scenarios*. The report provides the current status of the general fund as of December 16, 2015, and various general fund revenue scenarios.
- *Moody's Analytics Report on Economic and Consumer Credit Analytics - North Dakota*. The report provides information from Moody's Analytics regarding North Dakota economic data and statistics.
- Reports summarizing legislative action during the August 2016 special legislative session.

OTHER REPORTS

The Budget Section received other reports, including:

- Department of Public Instruction - K-12 Student Enrollments and Projected State School Aid for the 2017-19 biennium - The report includes information on student enrollments for the 2015-16 academic year, projected student enrollments for the next 3 academic years, projected state school aid spending for the 2015-17 biennium, and the estimated cost-to-continue state school aid for the 2017-19 biennium. The Department of Public Instruction is expecting state school aid obligations for the 2015-17 biennium will be $30 million less than projected, leaving $30 million of unspent appropriation authority. Actual average daily membership for the 2015-16 academic year was 2,000 less than projections. The preliminary estimate of average daily membership for the 2016-17 academic year is 106,886, which is an increase of 796 students from the 2015-16 academic year. The department is projecting enrollments to increase by 1,800 students annually during the next biennium. The Budget Section learned if the second-year rate, student enrollments, and taxable valuations are unchanged, the cost to continue for the 2017-19 biennium would increase by $62.7 million.

- Dickinson State University - Theodore Roosevelt Presidential Library - The report indicated the Theodore Roosevelt Presidential Library Foundation is actively pursuing a fundraising goal of $50 million locally, regionally, and nationally and the foundation is developing relationships with the Theodore Roosevelt Association, descendants of Theodore Roosevelt, and other educational institutions in the nation. The foundation has developed an operational budget, a staffing plan, and the library will provide individuals access to President Roosevelt's papers online. The Theodore Roosevelt Presidential Library will not be officially sanctioned as a presidential library, because Congress only approved funding for the archiving of presidential papers after President Herbert Hoover and presidential libraries previous to President Hoover are not officially sanctioned, but the goal of the foundation is to establish a presidential library that compares to sanctioned libraries. The library will be the first fully digital presidential library and it expects the library to be financially independent and self-sustaining through capital campaigns, endowments, visitors, grants, and institutional and for profit networks.
- Valley City State University - Heating Plant Report - The report indicated that construction of the new heating plant on adjacent property owned by the Valley City State University alumni foundation would be more cost effective than building on the site of the existing heating plant. The report also identified no change in the cost of the project.
- Budget allotment reports - Information from select agencies regarding their plans to meet the Governor's 4.05 percent general fund allotment for the following departments: DHS, Department of Corrections and Rehabilitation, State Department of Health, Department of Transportation, and University System.

AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION

Pursuant to Sections 54-16-04, 54-16-04.1, 54-16-04.2, 54-16-04.3, and 54-16-09, the Budget Section considered agency requests that were authorized by the Emergency Commission. The Budget Section approved 17 of the 19 requests for the following: increased spending authority for the 2013-15 biennium of $5 million and increased spending authority for the 2015-17 biennium by $3,018,365, made line item transfers of $984,714, authorized expenditures from the state contingencies appropriation of $70,000, and authorized expenditures from the state disaster relief fund of $27,307,427. The following is a list of 17 agency requests **approved** from June 16, 2015, through September 24, 2016:

Adjutant General

- June 16, 2015, to authorize the expenditure of $5 million from the state disaster relief fund for the 2013-15 biennium to pay off Bank of North Dakota loans which were used for state match for presidentially declared disasters that occurred during the 2013-15 biennium as appropriated in 2015 Senate Bill No. 2023.
- June 16, 2015, to authorize the expenditure of $27,307,427 from the state disaster relief fund for the state share of previous disasters still being processed and other disaster-related expenses for the 2015-17 biennium as appropriated in 2015 Senate Bill No. 2016.

Department of Agriculture

- September 23, 2015, to increase federal funds spending authority by $229,500 in the salaries and wages line item ($81,500) and the operating expenses line item ($148,000). The funding is for a United States Food and Drug Administration drug residue cooperative agreement.

Attorney General

- June 16, 2015, to authorize $70,000 from the state contingencies appropriation for the operating expenses line item to reimburse counties and cities for prosecution witness fees in cases heard in district and juvenile court.
- September 23, 2015, to transfer $75,000 from the abortion litigation fees line item to the litigation fees line item related to fees and costs for other pending litigation. The Attorney General requested a $120,000 transfer, but the Emergency Commission approved only $75,000.
- September 29, 2016, to transfer $70 from the abortion litigation fees line item and $121,644 from the higher education legal services fees line item to the operating expenses line item for a total transfer of $121,714 for prosecution witness fees.

State Auditor

- June 16, 2015, to transfer $80,000 from the operating expenses line item to the capital assets line item for a remodeling project on the third floor of the Capitol tower.

North Dakota Council on the Arts

- September 23, 2015, to increase the operating expenses line item by $100,000 of special funds from a Bush Foundation Community Creative Cohort program grant for the agency's Art for Life program toolkits.

Department of Parks and Recreation

- June 27, 2016, to increase spending authority by $150,000 of special funds from the Lewis and Clark Fort Mandan Foundation from fundraising efforts for the agency's Lewis and Clark Interpretive Center line item to support the development of temporary exhibits, promotion, interpretive programming, and events.

Department of Public Instruction

- June 27, 2016, to increase spending authority by $500,000 of special funds in the operating expenses line item from reimbursements from school districts for the cost of processing bulk commodities into food items served by the schools under the United States Department of Agriculture National School Lunch Program.

Secretary of State

- June 27, 2016, to transfer $208,000 from the operating expenses line item to the salaries and wages line item for hiring employees to provide staff support during the agency's development of its software solution for office operations.
- June 27, 2016, to increase the operating expenses line item by $150,000 from the agency's general services operating fund. The fund receives revenue from operations of the agency's electronic central indexing system and contractor licensing functions.
- September 29, 2016, to increase special funds spending authority by $200,000 from the Secretary of State's general service operating fund. The number of contractor licenses issued has been more than anticipated resulting in additional expenses.

State Treasurer

- June 16, 2015, to transfer $500,000 from the township allocation line item to the property tax relief credits line item to allow full payments to counties under the 12 percent property tax relief credit program for the 2013-15 biennium.

Department of Veterans' Affairs

- December 16, 2015, to increase federal funds spending authority by $64,253 in the Department of Veterans' Affairs line item. The funding is for providing transportation services to veterans or purchasing vehicles to transport veterans.
- December 16, 2015, to increase federal funds spending authority by $1,264,612 in the Department of Veterans' Affairs line item. The funding is for purchasing wheelchair accessible vans, operation of the vans, and providing reimbursements to subrecipients proving medical-related transportation services.

Veterans' Home

- September 29, 2016, to increase special funds spending authority by $360,000, of which $225,000 is in the operating expenses line item, and $135,000 in the capital assets line item. The request is to offset general fund budget reductions of $569,701 approved during the August 2016 special legislative session. Funding is from available Veterans' Home special funds.

The following 2 agency requests **were not approved** by the Budget Section:

Job Service North Dakota

- December 16, 2015, to authorize $240,000 from the state contingencies appropriation for operating expenses ($50,000) and salaries and wages ($190,000) to maintain staffing through January 2016 related to the functionality of the new automated system for unemployment insurance claim services for employers and workers.

State Historical Society

- June 27, 2016, to authorize $75,000 from the state contingencies appropriation for operating expenses to cover legal fees in the state's defense of a lawsuit filed by the contractor related to the expansion of the Heritage Center. The Emergency Commission amended the request to require the State Historical Society to return any unused funds and to repay the state contingencies appropriation with any legal fees recovered through the litigation process.

ECONOMIC IMPACT COMMITTEE

The Economic Impact Committee was assigned three studies:

- Section 25 of 2015 House Bill No. 1018 directed a study of North Dakota's development of a civilian ground center, including studying deployable pilots, sensor operators, and a central location for processing first responder data generated from the deployment of unmanned aircraft and unmanned systems by first responders during federal, state, and local government responses to emergencies; and data management, data analysis, data interpretation, and information routing approximating a real-time basis.
- Section 1 of 2015 Senate Bill No. 2167 directed a study of the one-call excavation notice system, including the financial and operational impact on the underground facilities owners from the tremendous increase in the number of locates, a review of who should be responsible for the expenses associated with locating underground facilities in certain situations, the appropriateness of penalties for one-call excavation notice system violators, and the enforcement of penalties by the appropriate state agencies.
- Section 1 of 2015 Senate Bill No. 2276 directed a study of providing natural gas service to underserved communities in North Dakota from available natural gas not otherwise committed in main gas transmission lines near those underserved communities.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from the Department of Commerce semiannually regarding the status of the program to establish and administer an unmanned aircraft systems (UAS) test site in cooperation with the University of North Dakota (UND), the Aeronautics Commission, the Adjutant General, and private parties appointed by the Governor (North Dakota Century Code Section 54-60-28).
- A report from the Emergency Services Communications Coordinating Committee by November 1 of each even-numbered year regarding the use of the assessed communications services fee revenue; and receive recommendation regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers (Section 57-40.6-12).

Committee members were Senators Connie Triplett (Chairman), Randall A. Burckhard, Tom Campbell, Jonathan Casper, Lonnie J. Laffen, Mac Schneider, and Terry M. Wanzek and Representatives Thomas Beadle, Rich S. Becker, Joshua A. Boschee, Ron Guggisberg, Matthew M. Klein, Ben Koppelman, Cynthia Schreiber Beck, and Gary R. Sukut.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

CIVILIAN GROUND CENTER

Background

The Federal Aviation Administration (FAA) governs all airspace access in the United States. In November 2013 the FAA released its first annual integration of civil UAS in the National Airspace System Roadmap outlining efforts needed to safely integrate UAS into the nation's airspace. On December 30, 2013, the FAA chose six UAS test sites. These six test sites have geographic and climatic diversity and help the FAA meet its UAS research needs. North Dakota was one of the six states to be awarded a test site to develop solutions to integrate UAS into the national airspace. The test sites are intended to provide controlled environments in which limited integration of UAS into the national airspace system may occur and offer airspace and support services for industry to research, develop, test, and certify UAS and related technologies. Unmanned aircraft systems are one of the most promising technologies to address disaster response and relief operations. The unmanned aircraft systems industry is a data-driven operation that creates a massive amount of data. A civilian ground center is a tool for being a common data repository for smart data analytics and an evaluation site for processing first responder data. A civilian ground center is a physical place where a large variety of data streams from UAS may be collected, analyzed, managed, and redistributed.

Section 2 of 2015 House Bill No. 1018 granted $2,718,620 from the general fund for operations of the UAS test site. Of the amount appropriated, $1,200,000 was to be used as matching funds to incentivize private sector business development related to the test site.

North Dakota Law

House Bill No. 1328 (2015), relating to the use of unmanned aerial vehicles, was passed by the Legislative Assembly, and codified as Chapter 29-29.4.

Section 29-29.4-01 defines an unmanned aerial vehicle system as "an unmanned aerial vehicle and associated elements, including communication links and the components that control the unmanned aerial vehicle, which are required for the pilot in command to operate safely and efficiently in state airspace."

Section 29-29.4-02 limits the admissibility in criminal proceedings of information received from an unmanned aerial vehicle unless the information was obtained pursuant to a warrant or in accordance with an exception to the warrant requirement.

Section 29-29.4-04 allows the use of unmanned aerial vehicles for surveillance during the course of the patrol of national borders; by law enforcement to prevent an imminent danger to life or bodily harm; in an environmental- or weather-related catastrophe to preserve public safety, protect property, survey environmental damage to determine if a state of emergency should be declared or conduct surveillance for the assessment and evaluation of environmental- or weather-related damage, erosion, flood, or contamination; and for research, education, training, testing, or development efforts undertaken by or in conjunction with a school or institution of higher education within the state and its political subdivisions, or public and private collaborators engaged in mutually supported efforts involving research, education, training, testing, or development related to unmanned aerial vehicle systems or unmanned aerial vehicle system technologies and potential applications.

Testimony and Committee Considerations

In conducting its study on the development of a civilian ground center, the committee focused its deliberations on three areas:

1. Privacy issues concerning UAS use and the collection of data;
2. Cybersecurity and high-performance computing associated with a significant increase in data gathering, storage, and analysis; and
3. Recent developments in UAS applications, technology, and regulation.

Privacy

The committee received testimony from a representative of the American Civil Liberties Union of North Dakota regarding privacy considerations in the creation and use of a civilian ground center to process and analyze data received from UAS. According to the testimony, the FAA Modernization and Reform Act of 2012 required the FAA to integrate drones into the national airspace by the end of 2015. Although the primary focus of the FAA has been on the mechanics of integrating drones safely into the airspace, the FAA has acknowledged privacy must be part of that process. The FAA has created the following privacy requirements for each drone test site operator:

- Maintain and update a publicly available privacy policy that governs all drone operators;
- Create a mechanism to receive public comment on its policy;
- Conduct an annual audit of test site operations and assure all operators are compliant;
- Comply with all applicable privacy law; and
- Require all drone operators to have a written plan for retention and use of data collected.

The representative of the American Civil Liberties Union of North Dakota contended the proposed civilian ground center concept raises some serious privacy concerns. Three primary privacy considerations were identified for North Dakota to implement regarding developing a civilian ground center:

1. Strengthen the state's existing UAS laws by prohibiting the use of drones for mass surveillance policing and by prohibiting data sharing from government agencies to law enforcement and from private entities to government agencies, for judicial, administrative, or other governmental purposes;
2. Enact a state electronic communications privacy act; and
3. Require specific civilian ground center regulation, including data security measures to prevent cyber hacks and unauthorized access, public accountability and transparency provisions, and sanctions for mishandling of data, and the creation of an independent oversight board.

A representative of UND provided testimony indicating a central repository of large amounts of sensitive data, such as a civilian ground center, is an attractive target for hacking and other forms of unauthorized access. However, testimony from a representative of the Governor's task force on cybersecurity indicated privacy concerns of UAS were not included in the task force's objectives.

Cybersecurity and High-Performance Computing

The committee received testimony from a representative of the North Dakota University System which indicated the management of data from UAS requires the creation of technology and patents, the control of the technology and cybersecurity, and the creation of policy and law. NexusND is an attempt to create a distributed network of the 11 North Dakota universities to compete with larger universities. NexusND also is intended to ensure the technological capabilities and workforce of the state are equipped to deal with UAS, cybersecurity, and big data issues.

Testimony from a representative of the Governor's task force on cybersecurity indicated because most state data is stored on computers located in a computer center, a process exists for protecting the data. Among the different types of cybersecurity breaches, hacking is the most prevalent type of breach. Hacking incidents can be diminished by increasing and maintaining a high level of individual awareness. Sending data to the cloud for management and storage also may be an efficient way of preventing or minimizing cybersecurity breaches and protecting data received from UAS.

Testimony from a representative of UND indicated high-performance computing enhances the research activity of North Dakota universities. Establishing enhanced high-performance computing resources for the state has involved:

1. The establishment of the Northern Tier Network-North Dakota, a joint network effort between the Information Technology Department, North Dakota State University (NDSU), and UND to connect North Dakota to the nation's research and education network in 2007;
2. The consolidation of North Dakota University System information technology facilities through the appropriation of $12.5 million and a reallocation of an additional $4.5 million in 2011; and
3. The deployment of a TOP500 supercomputer.

A representative of NDSU provided the committee with information regarding uses of high-performance computing. Among the uses is the storage, analysis, and processing of data from UAS in a variety of contexts, including emergency search and rescue. Because some UAS have the capability to capture and send up to 500,000 images per day, high-performance computing data centers are necessary to handle that amount of data. Although the high-performance computing capabilities at NDSU may be able to accommodate the technological data requirements of first responders, additional system and technological hardware development would be necessary to fully satisfy the scope of such a project.

A representative of Amazon Web Services contended cloud computing, the on-demand delivery of information technology resources over public or private networks, will enable organizations to more easily build technology applications, pave the way for disruptive innovation, and drive an innovative ecosystem.

Recent Developments in UAS

The committee received testimony regarding recent developments in UAS applications, technology, and regulation. The committee was informed rules were being developed to govern small flown at altitudes of under 400 feet. After implementation of the rules for small UAS, the next milestone will be rules governing operation of beyond visual line-of-sight UAS. Generally, federal law preempts state regulation, with the exception of privacy and property regulation. Because the state has small, medium, and large UAS development and agricultural research, beyond visual line-of-sight research, pipeline research, and a great amount of end use opportunity, the state could be a destination for the UAS industry. The FAA is working to develop a regulatory framework before a large amount of state legislation is enacted which could impede efforts at the federal level.

Testimony in support of the development of a civilian ground center from a representative of Grand Sky Development Company indicated the state is leading the nation in UAS, but needs a ground center to process the data. Although a civilian ground center is likely to create jobs, there are issues to be resolved, including development of rules and regulations that are flexible, adjustable, and clear with defined consequences and which provide for third-party independent oversight. The testimony indicated UAS can provide an efficient, cost-effective, and safe method of collecting information in an emergency and the availability of knowledge, information, or data that can be accessed to create actionable intelligence can make a difference in the timeliness and effectiveness of a response.

Testimony in support of the development of a civilian ground center from representatives of the Department of Emergency Services and the State Department of Health indicated UAS may be used for surveillance of hazards that are difficult or dangerous to observe directly by personnel, such as breaching dikes and dams, fire- or wind-damaged medical facilities, triage staging areas in which mass disaster casualty victims are categorized for treatment and transport, large response vehicle and medical equipment staging areas, explosive environments, and leaking pipelines. The use of UAS is more cost-effective and efficient than mounting video surveillance cameras on incident command trucks and the UAS has the added benefit of being mobile.

Committee members generally agreed the state is well positioned with infrastructure and support capabilities to host a center to support emergency management situations and recognized the state has been a leader in development of UAS and in the collection, analysis, and storage of public and private data in a safe and secure manner.

Conclusion

The committee makes no recommendation regarding the development of a civilian ground center in the state.

ONE-CALL EXCAVATION NOTICE SYSTEM

Background

Senate Bill No. 2167 (2015), as introduced, provided an appropriation of $2 million to the Public Service Commission (PSC) to reimburse the cost of one-call locates as a result of oil and gas development, but was amended in the Senate to provide for a study of the one-call excavation notice system. Testimony from the standing committees indicated the appropriation was proposed due to the increased numbers of underground facility location requests as a result of the increased construction in this state, especially in the western portion of the state. The testimony indicated there were significant increases in initial locate requests and relocate requests. Relocate requests occur often when an excavator requests a large locate and asks for the same locate after the excavation is not completed in 21 days, the time limit for excavation at a particular location.

In the 2007-08 interim, the Legislative Management's interim Natural Resources Committee studied the feasibility and desirability of establishing legislation for the enforcement and assessment of civil penalties for violation of the one-call excavation notice system. The committee considered, but did not recommend a bill draft.

North Dakota Law

The North Dakota one-call excavation notice system is governed by Chapter 49-23. The one-call excavation notice system was established in 1995. The notification center is governed by a nonprofit corporation, which is operated by the North Dakota One Call Board. Although the corporation and board are not part of any state agency, the PSC is given authority over civil penalties for violations of one-call laws.

Chapter 49-23 defines an excavator as "a person who conducts excavation" and an operator as "a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity." An underground facility is defined as "an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, water, steam, sewage, hazardous liquids, and other similar substances."

Section 49-23-04 provides "except in an emergency, an excavator must contact the notification center and provide an excavation or location notice at least 48 hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator." The notification center does not know the location of underground facilities, but knows the underground facility operators in the area and notifies these operators of a locate request by an excavator. All the information provided by the excavator is sent to each of the operators that have facilities in the dig area as a "ticket." It is the operator's responsibility to locate the lines through staff or through contract locators. The notification center is funded by a $1.10 fee charged to the excavator, unless the excavator is a homeowner or a farmer in which case there is no fee. For the first two locates in a location, the location cost is the responsibility of the operator.

Section 49-23-06 contains provisions that apply upon the damage to facilities. This section provides if any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. In addition, an excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of that section is guilty of a Class A misdemeanor. If an excavator fails to comply with Chapter 49-23 or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with the chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.

Section 49-07-01.1 authorizes the PSC to impose a civil penalty, not to exceed $25,000, for a violation of Chapter 49-23. Section 49-23-03 requires the North Dakota One Call Board to aid state's attorneys in enforcement and prosecutions of violations of Chapter 49-23. In addition, the board may institute a civil action for an injunction to enjoin violations of Chapter 49-23 without proof of actual damages.

The one-call laws have been amended to address issues such as markings, penalties, and locate requests during recent legislative sessions.

Senate Bill No. 2347 (2015) required tangible marking materials to be removed by an excavator after completion of an excavation and defined tangible marking materials to include any material perceptible by touch used to mark the location of an underground facility. The term does not include paint, chalk, or liquid ink.

In 2013, House Bill No. 1359:

- Increased the civil penalty imposed by the PSC from up to $5,000 to up to $25,000 for a violation of the one-call excavation notice system.
- Allowed an excavator to notify the notification center of the location by an identifiable roadway or roadway intersection and, if the location is large or complex, the excavator was required to provide information by white marking, project staking, geographic information system shape file, detailed drawing, map, or other appropriate means.
- Changed the limitation to 21 days for the area to be excavated in the location request and the time after which facilities are required be relocated, unless other arrangements have been made with the underground facility owner.
- Provided the excavator is responsible for locate costs after two locates in the same area.
- Required an underground facility owner to make all new facilities locatable.
- Required the excavator to use reasonable efforts to maintain markings during excavation.

In 2011, House Bill No. 1382 changed the definition of "locate" as used when an operator must locate markings of an underground facility to include showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.

Testimony and Committee Considerations

The committee received testimony from representatives of the North Dakota One Call Board and North Dakota One Call regarding the operation of the one-call excavation notice system. The board, which is responsible for the operation of the notification system, contracts with One-Call Concepts, a leader in the industry which has a call center for North Dakota in Davenport, Iowa. One-Call Concepts has multiple centers that can back up each other. The testimony indicated North Dakota leads in the increase in call volume among the states that contract with One-Call Concepts. The board consists of up to eight members, seven utility representatives, and one excavator representative. The board promotes awareness of the one-call excavation notice system. The contract for one-call services is reviewed every 3 years.

Testimony from a representative of North Dakota One Call indicated there is an exclusion from using the one-call excavation notice system for normal farming practices to the depth of 18 inches. The agricultural exemption is for a farmer or landowner, not a commercial agricultural business like a soil sampler. Drain tiling or deep tilling requires a ticket.

The committee received testimony from representatives of North Dakota One Call and the North Dakota Association of Telecommunications Cooperatives regarding expenses associated with locating underground facilities. According to the information received, under certain circumstances upon the third locate, the excavator is responsible for the reasonable costs of locating the underground facilities. Reasonable costs include time and mileage. If the excavator is performing excavation, the excavator may call as many times as necessary to refresh the lines without cost.

An underground facility is made locatable by using tracer wire, using a tracer ball, or by global positioning system and geographic information system mapping. The testimony indicated locating facilities is expensive, and a portion of the cost is passed on to ratepayers and customers of that utility. Members of the Association of Telephone Cooperatives expressed concern because the utilities have experienced a number of excavators repeatedly making relocate requests.

The committee received testimony from representatives of PSC regarding penalties for excavators violating the laws relating to the one-call excavation notice system. According to the testimony, the $25,000 maximum for civil penalties is sufficient. However, there are problems with collecting penalties. A representative of PSC indicated the imposition and collection of penalties takes valuable staff time and the commission determines the amount of the civil penalty based on the circumstances of each case. The $25,000 penalty is determined appropriate when someone has died as a result of a violation.

The committee discussed the culpability standards applicable to excavators who damage underground facilities and who do not report the damage. Committee members discussed whether there should be a focus on an excavator's state of mind when damaged was caused or if a penalty should attach only if an excavator knew or should have known damaged occurred and failed to report the damage. The committee members also considered whether the purpose of

the penalty provisions should be to incentivize excavators to report damage so that repairs may be done rather than punish the excavator for causing the damage.

The committee received testimony supporting three improvements to the one-call excavation notice system:

1. Requiring a minimum fine for damage to an underground facility which is high enough to deter violations and establishing a clear method and schedule of how to progressively assess higher fines for repeated violations.
2. Clarifying the penalties for violating provisions of one-call laws, such as failing to maintain markings.
3. Amending the law to cut down on unreasonably large locate requests and an unreasonable amount of relocate requests.

The committee considered a bill draft that would:

- Revise the reference to midnight in the definition of "locate period" to read "12:01 a.m. of the day after the location request is made" to avoid any confusion about whether midnight is the beginning or end of a day;
- Clarify that a homeowner requesting a locate would not be charged for locate costs;
- Increase the membership of the North Dakota One Call Board from eight to nine members with the addition of a member representing oil or gas transmission or gathering line operators;
- Limit the size of a locate to an area not exceeding three city blocks in diameter within an urban area or an area of 160 contiguous acres or 5 linear miles in a rural area;
- Provide if an excavator is unable to locate a facility within 2 feet on either side of the operator's facility location markings and requests assistance from the operator to locate the facility, but the operator fails to provide the requested assistance within a reasonable time, the operator is responsible for the excavator's reasonable costs incurred to locate the facility; and
- Remove the reference relating to the excavator's state of mind when the damage was caused.

Recommendation

The committee recommends House Bill No. 1026 to clarify the definition of "locate period," increase membership of the North Dakota One Call Board from eight to nine members, identify the size of a locate area, address the assignment of costs of locating underground facilities, and clarify liability provisions relating to damage of underground facilities.

NATURAL GAS SERVICE

Background

North Dakota has nearly 370 communities without natural gas service, including 11 with a population of more than 1,500 people. Natural gas is a resource typically required to attract any significant manufacturing opportunity.

Senate Bill No. 2276 (2015), which directed this study, originally provided incentives to encourage the expansion of natural gas services to communities in the state. The bill would have provided:

- A property tax exemption for infrastructure used to deliver natural gas to unserved communities;
- An income tax credit for conversion to a natural gas heating source;
- A sales and use tax exemption for construction or expansion of a natural gas heating source; and
- A sales and use tax exemption for construction or expansion of a natural gas transmission or distribution system.

According to the testimony on the bill, the purpose of this study was to determine whether it is possible to bridge the gap to bring natural gas to communities not served and to study where the uncommitted gas would be in those transmission lines that are near those underserved communities. Expanding natural gas to communities poses an economic challenge because those communities generally are a distance from the lines.

Pipeline safety is governed by Section 49-02-01.2 which grants authority to PSC to establish and enforce minimum safety standards for the design, construction, and operation of gas distribution facilities and intrastate pipeline facilities used for the distribution and intrastate transportation of gas, liquefied natural gas, or hazardous liquids. The United States Department of Transportation regulates interstate pipelines through its sub agency, the Pipeline and Hazardous Materials Safety Administration.

Testimony and Committee Considerations

The committee received testimony from a representative of the Economic Development Association of North Dakota which indicated natural gas is needed for significant manufacturing, and other states have programs to expand natural gas to unserved and underserved communities. Testimony from representatives of local economic development organizations indicated Jamestown, Hillsboro, and Wahpeton are underserved communities and Wahpeton has lost several economic development projects because of insufficient natural gas service. The testimony indicated Wahpeton cannot compete with cities in neighboring states for manufacturing businesses because of the lack of natural gas, and many small communities throughout the state have been unable to attract businesses due to the lack of availability of natural gas. However, testimony from a representative from the Economic Development Association of North Dakota indicated the number of potential users in rural communities is not adequate to support the cost of pipeline expansion to obtain service.

The committee was informed there are three major natural gas pipeline systems in the state:

1. The Northern Border Pipeline, which includes the Bison Pipeline. The Northern Border Pipeline is a 40-inch pipeline that runs diagonally from the northwest to southeast portion of the state. The majority of gas produced in North Dakota goes into the Northern Border Pipeline;
2. The Alliance Pipeline, a liquids-rich gas pipeline that carries unrefined gas, meets the specifications for end users. The pipe has a 36-inch diameter.
3. The Williston Basin Interstate Pipeline, an old pipeline that was part of the Montana Dakota Utilities Co. distribution system. The pipeline was turned into a common carrier and interstate pipeline. The pipeline varies in size from a 16-inch diameter at the largest to 8 inches from Bismarck to Jamestown, 6 inches from Jamestown to Valley City, and north by Cavalier from 4 to 6 inches. More customers cannot be added because of the lack of capacity.

The United States produces 73 billion cubic feet (BCF) of natural gas and burns approximately 70 BCF. The committee was informed it would cost approximately $3 million to tap the Alliance Pipeline and $300,000 to $400,000 to access the Williston Basin Interstate Pipeline. The cost of pipe is $1 million per mile for steel and $400,000 per mile for plastic. In addition, there are costs associated with the downsizing of pipe and for a city connection converting businesses and homes from propane to natural gas. The cost of converting from a propane furnace to a natural gas furnace is approximately $4,000 and the cost of converting other appliances in a home may be approximately $1,000.

Representatives of the propane industry expressed concern with the state providing assistance to expand natural gas service to unserved communities because of the millions of dollars in infrastructure already in these communities to provide propane that would be displaced. Propane industry representatives emphasized that propane is provided without state incentives and the decision to expand natural gas service should be done without government involvement.

The committee received information relating to efforts across the country to expand natural gas service areas. Minnesota recently enacted legislation to allow utilities to recover 30 percent of costs of expansion from the customer base, but legislation also has been filed to repeal that provision. The committee was informed there have been proposals in about 30 states to encourage natural gas service expansion. In addition to a variety of funding mechanisms, including loan programs, states have focused efforts on regulatory matters and enabling legislation.

Although large amounts of gas are coming from shale production, there are problems associated with the cost of extending pipelines and infrastructure. Representatives of the National Propane Gas Association encouraged free-market competition with electric, fuel oil, and natural gas. They contended subsidizing natural gas service is economically inefficient because it underprices the service, results in a misallocation of resources, and creates an artificial demand for the service.

Testimony from a representative of the Bank of North Dakota indicated the Bank had not been requested to consider assistance for a project for gas service extension. However, any existing Bank loan program would be available only to political subdivisions for critical infrastructure projects and not to private businesses.

A representative from the Department of Commerce indicated the economic development programs in the state are focused primarily on economic development projects and may not be a good fit for expanding natural gas service. However, it was suggested the North Dakota Pipeline Authority may be leveraged to expand natural gas across the state. The Legislative Assembly established the Pipeline Authority in 2007 to facilitate development of pipeline facilities to "support the production, transportation, and utilization of North Dakota energy-related commodities." The Pipeline Authority has broad ability to participate in pipelines, but not necessarily funding to do so. Although the Pipeline Authority may not have resources to assist in financing, it may collaborate in bringing parties together for a project.

A representative of the Economic Development Association of North Dakota indicated it may not be the right time to request tax incentives because of the budget environment. However, additional tools may be needed to help communities meet the financing gap in the future.

Conclusion

The committee makes no recommendation regarding its study of providing natural gas service to underserved communities.

REPORTS

Department of Commerce

The committee accepted the report of the Department of Commerce regarding the status of the program to establish and administer a UAS test site in cooperation with UND, the Aeronautics Commission, the Adjutant General, and private parties appointed by the Governor as required by Section 54-60-28. Representatives of the Department of Commerce reported the Northern Plains UAS Test Site continues to be the nation's preeminent UAS test site and helps position the state as a hub for UAS activity. The test site is performing increasingly advanced UAS research, development, and testing activities. Those capabilities, in combination with other assets, such as the Grand Sky Business Park and the state's research universities, are attracting private companies to the state and enabling growth of the private sector cluster of UAS activity in the state.

The report indicated the operating budget for the test site for the 2017-19 biennium is estimated at $3.5 million. With an anticipated carryover of approximately $1 million in unexpended 2015-17 funds, $2.5 million will be required to provide the necessary funds to operate the test site through the next biennium. The resources committed by the state to the test site have been used to maximize the state's impact on the national industrial effort in collaboration with the broader state efforts to develop the commercial UAS industry and to promote economic development in the state.

The committee considered a bill draft regarding the frequency of the Department of Commerce's status report of the UAS program. The bill draft would have changed the reporting frequency from semiannually to annually. Representatives of the Department of Commerce indicated reporting to the committee semiannually as required under Section 54-60-28 was preferred.

Emergency Services Communications Coordinating Committee

The committee accepted the report of the Emergency Services Communications Coordinating Committee regarding the use of the assessed communications services fee revenue as required by Section 57-40.6-12. Of the 54 governing bodies imposing a fee, 37 were levying $1.00 as of June 14, 2016. Voters approved increasing the emergency services communications system fee to $1.50 in 17 counties, an increase of 4 counties from the previous biennium. A factor that has impacted emergency services communications system revenue is an increasing number of wireless subscribers choosing not to renew wireless contracts and using prepaid wireless services as a replacement. Until January 1, 2014, emergency services communications system fees had not been universally collected on prepaid wireless services. However, through legislation enacted as part of the 2013 Legislative Assembly, these fees are now collected at a rate of 2 percent of the gross receipts at the point of sale. In 2015 the prepaid fees approached nearly $1 million. The report indicated a continuation of revenue growth from collection of fees with an 18 percent increase from 2013 to 2015.

The report indicated Next Generation 9-1-1 is a nationwide initiative with the goal of improving access to, and interoperability of, 911 service between the public and public safety answering points. With a new Internet protocol network largely in place, the 911 system is positioned to accept new forms of communication from the public. The first of the new communication types allows text-to-911 service across the state. The integration of the 911 networks between North Dakota and Minnesota has improved all services in the state. In 2015 North Dakota, South Dakota, Minnesota, and Iowa were asked to participate in a program sponsored by the National 911 Program called the NG9-1-1 Interstate Playbook. The purpose of the initiative is to identify the technologies, procedures, and policies required to transfer 911 calls across state boundaries without any loss of data or degradation of service. North Dakota and Minnesota were the first of the four states involved in this project to connect 911 networks, and as of May 2016, public service answering points in the state are able to transfer and receive 911 calls with location information from Minnesota.

The report indicated the land mobile radio systems in the state of North Dakota are at a critical juncture for supporting public safety. The land mobile radios serve as an essential communications tool for over 900 public safety and other public sector agencies comprising 20,000 users and devices across all 53 counties and several state agencies. Many of these systems, primarily anchored on 1970s technology and implemented individually by state, local, and municipal entities over the past 3 decades, will soon reach the end of the functional lifecycle of the systems and, as the vendors begin to sunset old technologies, will no longer be supported by the manufacturers. In response to these issues, the 2015 Legislative Assembly directed the Information Technology Department to determine the feasibility and desirability of implementing of a statewide interoperable radio network. The report of that study provided a number of recommendations and tasks to address the governance of a statewide radio system, the contribution and unified

deployment of existing tower and frequency resources for a solid technical solution, and the development of a state and local funding structure for initial and long-term support.

The report of the Emergency Services Communications Coordinating Committee included recommendations to amend statutory provisions to address the transition to Next Generation 9-1-1, align standards for public safety communicators with federal requirements in related standards, and align billing practices with modern 911 database provisioning practices.

Recommendation

The committee recommends House Bill No. 1027 to address the transition to Next Generation 9-1-1, align standards for public safety communicators with federal requirements in related standards, and align billing practices with modern 911 database provisioning practices.

EDUCATION COMMITTEE

The Education Committee was assigned three studies.

Section 29 of 2015 Senate Bill No. 2031 directed a study of North Dakota content standards and assessments. The study was to provide for a review of the content standards applicable to all grade levels in this state, from kindergarten through grade 12, in the areas of English language arts and mathematics. The study also was to compare the content standards of this state to those of other states that are recognized as having high-academic achievement levels, and review the standards development process. The study was to review the purpose of general and alternate student assessments, examine the availability of existing and proposed assessment models, and examine the assessments utilized by other states that are recognized as having high-academic achievement levels. The study was to review those sections of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301, et seq.] that address standards, assessments, accountability, and local flexibility, and any recent pertinent regulatory changes or policy statements issued by the United States Department of Education.

Section 36 of 2015 Senate Bill No. 2031 directed a study of the nature and scope of career and technical education (CTE) opportunities available to students in this state, the manner in which such opportunities are financially supported, and the manner in which such opportunities are monitored to ensure that they provide students with 21st century technical skills that are aligned to industry standards, in addition to providing appropriate academic foundations.

Senate Concurrent Resolution No. 4018 (2015) directed a study of the use of seclusion and restraint procedures in schools.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from the Superintendent of Public Instruction by the end of February regarding the financial condition of school districts. (North Dakota Century Code Section 15.1-02-09)
- A compilation of annual school district employee compensation reports from the Superintendent of Public Instruction. (Section 15.1-07-13)
- A report from the Superintendent of Public Instruction regarding a request from a school or school district for a waiver of any rule governing the accreditation of schools. (Section 15.1-06-08)
- A report from the Superintendent of Public Instruction regarding a request from a school or school district for a waiver of Section 15.1-21-03 regarding high school unit instructional time. (Section 15.1-06-08.1)
- A compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide from the Superintendent of Public Instruction. (Section 15.1-21-10)
- A report from the Superintendent of Public Instruction before July 1, 2016, regarding findings and recommendations of the School District Reporting Review Committee, pursuant to Section 28 of 2015 Senate Bill No. 2031.
- A report from the Superintendent of Public Instruction by August 1, 2016, regarding the implementation of a uniform system for the accounting, budgeting, and reporting of data by an early childhood education provider who has received a grant pursuant to Section 6 of 2015 Senate Bill No. 2151.
- A report from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board. (Section 15.1-13-36)

Committee members were Senators Donald Schaible (Chairman), Howard C. Anderson, Jr., Kyle R. Davison, Robert Erbele, Tim Flakoll, Joan Heckaman, Richard Marcellais, Erin Oban, Nicole Poolman, and David S. Rust and Representatives Mike Nathe, Richard G. Holman, Bob Hunskor, Mary C. Johnson, Jerry Kelsh, Alex Looysen, Lisa Meier, David Monson, Karen M. Rohr, Mark Sanford, Cynthia Schreiber Beck, Kris Wallman, and Denton Zubke.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

NORTH DAKOTA CONTENT STANDARDS AND ASSESSMENTS

Background

A standard is a concise, written description of that which students are expected to know and be able to do at a specific stage of their education. It is an educational objective applicable to a particular point, which is often the end of a course, a grade level, or a grade span. A standard does not prescribe any particular teaching practice, curriculum, or assessment method.

Standards are generally organized by subject matter--English language arts, mathematics, science, social studies, etc. These are the same general subject-matter categories that schools have used for decades. Within each subject-matter category, standards are usually organized by grade level or grade span. The sequencing of the standards is called a learning progression. There are two main characteristics inherent in all sequential standards:

- The descriptions for each standard address the specific learning needs and abilities of students at a particular stage of their intellectual, emotional, social, and physical development; and
- The standards reflect clearly articulated sequences, so that each learning expectation builds upon previous expectations and at the same time prepares students for more challenging concepts and more sophisticated coursework at the next level.

The basic purpose of this organizational framework is to ensure students are being exposed to developmentally appropriate material and teachers are sequencing student learning effectively. Standards generally include overarching, long-term educational goals. These goals tend to reference the knowledge, skills, work habits, and character traits teachers and schools are expected to foster. Finally, standards generally include references to content.

Standards are historically rooted in the concept of school improvement--improving the effectiveness of schools, improving the quality and consistency of teachers, and improving the academic achievement of students. Standards can be used to provide consistency and commonality with respect to that which is taught in different states, schools, and classrooms.

An assessment is a tool used to evaluate, measure, and document things such as a student's academic readiness, learning progress, and skill acquisition. Assessments are used to determine a 4-year-old's readiness for kindergarten and a 12th grade student's comprehension of advanced physics. Each assessment has a different purpose. The purpose dictates the design of the assessment. Measuring a student's perceived ability or readiness to learn requires a different type of assessment than one which measures the acquisition of certain skills or knowledge. Measuring a student's recollection of facts requires a different type of assessment than one which measures analytical and comprehension skills. Assessments also can be crafted to identify academic strengths and weaknesses so that teachers are better able to provide specialized academic support, educational programming, or social services.

Assessments come in many forms, depending on the purpose for which they are designed. Following is a description of the more commonly referenced types of assessments.

- Diagnostic assessments attempt to quantify that which a student already knows about a subject or a topic. They are generally given at the beginning of a school year or at the beginning of a new unit of study.
- Formative assessments are used to determine a student's progress toward a defined learning goal. They are given throughout the learning process.
- Interim or benchmark assessments are used to predict a student's performance on summative assessments. Interim assessments are given periodically, and generally at the end of a grading period.
- Summative assessments are used to determine a student's mastery of a topic after instruction. Summative assessments are given at the end of a school year or at the end of a unit of study.
- Norm-referenced assessments measure students against a national "norm" or an average, to rank the students against each other. Examples of norm-referenced assessments include the SAT and the ACT.
- Criterion-referenced assessments measure a student's performance against a standard or specific goal. Examples of criterion-referenced assessments include unit and chapter tests, as well as the assessments commonly referred to as the Partnership for Assessment of Readiness for College and Careers and Smarter Balanced.

Assessments can be delivered using a paper and pencil method or an online method. An online assessment can also be an adaptive assessment. As a student answers questions correctly, the assessment selects increasingly difficult questions. Likewise, if a student answers questions incorrectly, the assessment will select less difficult questions. Adaptive assessments provide information regarding the actual level of a student's knowledge and not just whether a student is functioning at, above, or below a particular level.

Under the Improving America's Schools Act of 1994, there was a move toward organized school improvement. This effort centered around standards for learning and periodic measures of progress using state assessments. When the federal No Child Left Behind Act of 2001 took effect, it required a concerted effort to pursue higher and more equitable outcomes for students, regardless of their socioeconomic status, their race, their ethnicity, or any existing disability. It also required a concerted effort to provide highly qualified teachers for all students.

Since 2002 these efforts have been pursued largely through test-based accountability strategies that articulated annual targets for growth and included consequences for not meeting those targets. State tests showed noticeable student gains over time. However, progress has not been evident on the National Assessment of Educational Progress. As for the Program for International Student Assessment, which is a more open-ended test evaluating how students can apply their knowledge and can demonstrate their reasoning. United States scores in mathematics, reading, and science declined between 2000 and 2012.

Some states are beginning to re-examine educational strategies and implement changes to ensure every student will be able to learn the higher-order skills necessary to succeed in the 21st century's global environment.

Testimony and Committee Considerations

Federal Law Regarding Standards

The Elementary and Secondary Education Act of 1965 protects the right of each state to set its academic content standards and seeks assurances from the state that its self-determined standards are challenging and apply to all students, specify what children are expected to know and be able to do, contain coherent and rigorous content, and encourage the teaching of advanced skills. Academic content standards are designed to be appropriately concise, specific, sequentially articulated and interrelated across grade spans, progressively challenging, and manageable. Content standards progress from skills of recognition, to identification, to use, to application across disciplines, to analysis, to evaluation, or to other higher-ordered, critical-thinking activities appropriate for the subject matter. Content standards sometimes require the acquisition of knowledge or the demonstration of logical reasoning, critical thinking, or multi-step problem solving. Content standards may involve oral or written communication, constructive and detailed reading, procedural skill and fluency, quantitative analysis, measurement, artistic expression, language acquisition, physical training, health skills, and more, all based on the content subject.

A representative of the National Conference of State Legislatures (NCSL) provided information regarding the reauthorization of the federal Every Student Succeeds Act. The testimony indicated the passage of the Every Student Succeeds Act pushed the direction of federal education policy from where it had been under the No Child Left Behind Act of 2001 to allow more state and local flexibility. The United States Department of Education is required to write regulations to govern the implementation of the Act. Because full implementation of the law will not occur until the 2017-18 school year, the 2016-17 school year is viewed as a transitional year. The law will continue to require teacher equity plans to ensure the most disadvantaged students are not being taught by the least experienced or improperly credentialed teachers. State education officials will be required to be very knowledgeable regarding teacher backgrounds, qualifications, and performance. The law eliminates the federal requirement that states evaluate teachers based on student growth.

Standards and Assessments Utilized by Other States

The committee received information from a representative of the National Center on Education and the Economy regarding content standards and assessments in Kentucky, which was the first state to require implementation of the Common Core Standards. The state's strategy for implementing the standards involved individuals at the state and district level who were involved in the design of the plan. The proposal focused on systematic reform involving all the known features of top-performing educational countries altered to fit Kentucky, and addressed reform along a practical legislative continuum. The testimony indicated before the reform, Kentucky had one of the worst education systems in the United States. Kentucky has improved to the statistical middle for elementary and secondary education in almost all educational indicators and statistical categories.

The committee received information from a representative of NCSL regarding recent activity among states on Common Core Standards and content standards and assessments aligned to Common Core Standards. Generally, higher education systems and institutions have been the driving factor pushing for higher content standards because remediation rates across the country are a problem at many higher education institutions.

According to the NCSL representative, states typically have a 2- to 10-year window for review of content standards to determine if the standards remain relevant and accurate. In approximately 30 states, the name of the content standards has been changed and those states no longer use the terminology "Common Core." Almost all states have some degree of participation with either the Partnership for Assessment of Readiness for College and Careers assessment consortium or the Smarter Balanced Assessment Consortium (SBAC). The report indicated there were 16 states associated with SBAC, including North Dakota. There has been a major increase in legislative activity across the nation regarding Common Core Standards since 2011. The increase is a result of concerns, questions, and opinions being raised as states begin implementing standards. The states that have had the most seamless transition with Common Core Standards and college and career readiness standards have worked cooperatively with higher education systems and the institutions to promote a higher degree of preparedness for college. The National Conference of State Legislatures representative indicated Texas has long been considered to have high content standards, and other states have adopted Texas curriculum materials. According to the NCSL representative, implementation of standards by a state should include:

- A combination of academic content standards;
- The educator's role in making the standards come alive;
- Professional development of educators to ensure they are qualified to implement any changes made to academic content standards;
- Classroom practices that evolve out of the educator's role in implementing the standards;
- Curriculum and instructional materials used by the educators in the classroom;
- An assessment system that accurately and reliably reflects what the students are learning in the classroom;
- Accountability measures for the state to ensure the students are learning; and
- A role for higher education in ensuring new educators coming into the field are aware of the current content standards.

Assessment Performance Report

The Superintendent of Public Instruction provided information regarding state assessment test performance, comparisons to other states, plans for future assessments, plans for the superintendent's assessment task force, and assessments undertaken by school districts other than those required by statute. The results of the spring 2015 state assessment aligned very closely with other national results on the ACT. All 179 school districts within North Dakota were surveyed to determine which is given, at which grade levels, how many times per year, and how long the assessments take. Although only a few assessments are required by state and federal law, many school districts choose to offer more assessments.

The National Assessment of Education Progress is required to be given to grades 4 and 8 every other year. The ACT WorkKeys is an assessment required by the state to be taken by grade 11 students. State and federal law require a science assessment be given to students in grades 4 and 8 and once in high school. State and federal law also require assessments in mathematics and English language arts for grades 3 through 8 and grade 11. On average in the state, students spend 14,284 hours in school between elementary, middle, and high school. A student, on average, spends 138 of those hours taking standardized assessments, which is less than 1 percent of the student's total class time. The 138-hour average accounts for all required state and federal assessments as well as all optional assessments that the school districts choose to utilize. No school district is administering assessments that account for more than 2 percent of a student's total classroom time.

According to the Superintendent of Public Instruction, 99 percent of all students in the state are tested under SBAC. She said 56,000 students were asked to sit for assessments this past year, and of the tests that were scored at the time of the report to the committee, 46 percent of the students were proficient in English and 40 percent were proficient in mathematics. The scores are in line with the state's results from other well-regarded national assessments, including the ACT and the National Assessment of Educational Progress.

Review of the Standard Development Process

The committee received information from a representative of the Department of Public Instruction (DPI) regarding the history of content standards in North Dakota. Under Article VIII of the Constitution of North Dakota, the Legislative Assembly is responsible for providing a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education. The Legislative Assembly is required to take such other steps as may be necessary to prevent illiteracy; secure a reasonable degree of uniformity in the course of study; and promote industrial, scientific, and agricultural improvement.

In meeting its constitutional mandate, the Legislative Assembly has enacted certain statutes to secure a reasonable degree of uniformity in the course of study, including:

1. Declaring the Superintendent of Public Instruction responsible for supervising the development of course content standards and the assessment of students (Section 15.1-02-04.3);
2. Requiring all approved schools to meet curricular requirements set forth in state law (Section 15.1-06-06);
3. Requiring each instructional unit in approved high schools to meet or exceed the state content standards (Section 15.1-21-02); and
4. Requiring the annual administration of state assessments in prescribed subjects and grades that are aligned to the state's content standards (Section 15.1-21-08).

State law identifies state course content standards as a foundational assurance for securing a reasonable degree of uniformity in the course of study statewide. The Superintendent of Public Instruction has established uniform procedures that direct the development, review, and adoption of state academic content standards within defined courses of study.

For the past 2 decades, the DPI has developed and revised state academic content standards through a clearly articulated process, predicated on the principle that education stakeholders need to actively engage in determining appropriately rigorous learning expectations for all students at all levels of education, leading to meaningful college or career readiness. The department seeks to periodically revise content standards as suggested by classroom and community experiences and expectations and through the guidance of state and national education policymakers.

Supervision of state academic standards includes establishing broad content design and process procedures, administratively managing academic content standards development projects, approving and disseminating content standards documents, and evaluating elements of the content standards development process. The Elementary and Secondary Education Act of 1965, as reauthorized under the title No Child Left Behind Act of 2001, requires each state to demonstrate it has adopted challenging academic content standards. The Department of Public Instruction's standards development procedures provide for the proper management of state-defined and federally defined activities.

The Department of Public Instruction manages academic content standards development activities, including the solicitation and selection of any required external professional consultants for the purposes of providing independent facilitation and research, the solicitation and appointment of content area standards committee membership, the design and conduct of external research surveys, the sponsorship of statewide solicitation of public comments, and the control of all contracting to support the objectives of the various content program efforts. The department budgets sufficient funds and time to ensure a comparable effort across all academic content areas.

The Superintendent of Public Instruction establishes and maintains a statewide committee of representative education stakeholders to advise DPI regarding the design, development, implementation, and evaluation of the state's various content standards development projects and documents. The responsibilities of the advisory committee include advising DPI regarding:

1. Designing, developing, implementing, and evaluating academic content standards for all specified content areas and corresponding academic achievement assessments;
2. Planning for the design, development, implementation, and evaluation of certain state assessments, aligned to the state's academic content standards in English language arts, mathematics, and science;
3. Developing processes to support the implementation of the state's academic content standards and achievement assessments at the district level;
4. Developing evaluation strategies and consequential validation studies to assess the impact of the state's academic content standards and achievement assessments on student and school outcomes;
5. Coordinating communication efforts to educators, policymakers, and the public regarding the development of the state's academic content standards, achievement assessments, and other related activities; and
6. Proposing initiatives that might enhance the long-term stability and improvement of the state's academic content standards development efforts.

The Department of Public Instruction reviews all proposals to develop content area standards and develops standards in several subject areas, including:

1. The arts, including dance, drama, music, and visual arts;
2. English language arts;
3. World and foreign languages;
4. Health;
5. Library and technology;
6. Mathematics;
7. Physical education;
8. Science;
9. Social studies and sciences, including history, economics, government, civics, geography, and culture;
10. English language learner proficiency; and
11. Prekindergarten.

If, under the Superintendent of Public Instruction's content review process, a content standards advisory committee recommends an external standards document for adoption, the document must be amended to meet certain format specifications and include the title design for DPI, before approval by the Superintendent. All content standards development projects follow certain prescribed phases, including startup and draft preparation, approval and dissemination, and implementation and evaluation.

Within the development and draft preparation phase, a content standards development advisory committee is selected, convened, and trained. Committee members are nominated by local education leaders based on teaching experience, content expertise, leadership background, and other criteria. Training of committee members includes an overview of the state's development procedures; expectations of committee members; and instructions regarding the structure, format, and content of state academic content standards documents. Initial drafts are written, reviewed, revised, and distributed to education stakeholder groups and the public for review and comment. A preliminary draft is prepared for approval and placed for dissemination on DPI's website.

Within the approval and dissemination phase, the Superintendent of Public Instruction approves the final standards document. A content standards document is posted on DPI's website for online dissemination, and public notice is forwarded to various groups and individuals, including all school districts, libraries, universities, and other education-related organizations. The department offers technical assistance to school districts regarding the use of the standards document. School districts begin the process of drafting local curricula aligned to the state standards document.

Within the implementation and evaluation feedback phase, teachers and administrators use the standards document as the basis for standards-based curriculum development, instructional design, professional development, and evaluation. Teachers and administrators incorporate the standards documents into school improvement planning. Teachers and administrators also submit recommendations to DPI regarding improvements for future standards. Continual feedback on the effectiveness of the standards document is provided through online reporting and training opportunities, regional and statewide education conferences, graduate programs, and long-term local curriculum mapping and development initiatives. The department compiles submitted recommendations for the improvement of standards documents to prepare for the next generation of content standards development activities.

The Department of Public Instruction appoints a project director to supervise all content standards project activities. The department contracts with external content specialists or consulting organizations to assist the project director and content standards advisory committee regarding content and formatting matters. The department contracts with an external consultation organization to provide facilitation services throughout the revision project and contracts with an independent external evaluator to review the content and formatting of the standards document to assure subject matter competence and adherence to state procedures.

English language arts and mathematics standards are reviewed every 5 to 7 years. During the standards development process, participants select the best examples from a variety of states and make appropriate changes for this state to prepare students for college and careers. The Superintendent of Public Instruction contended the final approval of the standards will result in unique state English language arts and mathematics standards that will hold students to consistent high expectations that encourage excellence at all levels of education. Implementation of the standards will begin in classrooms in the fall of 2017.

A representative of Bismarck State College provided information to the committee regarding alignment of English language arts content standards with entry into higher education. According to the testimony, a vertical alignment committee created by the Superintendent of Public Instruction was tasked with identifying gaps in competency expectations for high school students and of those entering college. Upon completing the task, the vertical alignment committee members generally agreed that if successfully implemented, the Common Core Standards would present no skill gap between high school and college. The vertical alignment committee developed a measurement rubric for the purposes of assessing successful attainment of the basic course outcomes for English 110. The rubric is meant as a guideline for authentic writing assignments that could be graded in a holistic manner with the backdrop of overall course expectations. Reading and writing can be difficult to evaluate and measure on a standardized test.

A representative of North Dakota State University provided information to the committee regarding alignment of mathematics content standards with entry into higher education. The testimony indicated the actual content of mathematics has not changed much over the past 50 years. It is important for students to be able to solve new problems, not to just learn the content and be able to recite it. According to the testimony, the assessment is critical in determining the extent to which students are able to use and apply the content they have been given. However, it was argued under the current system, teachers tend to revisit the same topics repeatedly with students.

The representative of North Dakota State University provided testimony indicating research shows there are no gaps in the content standards for mathematics. According to the testimony, there is approximately a 50 percent overlap between Algebra I, Algebra II, and college Algebra, which creates inconsistent learning that requires review of content already taught. Statistically, college freshmen tend to have the worst mathematics retention. The testimony contended that unless the students were taking high-level mathematics courses, many high school seniors are trying to survive their final mathematics course and are not highly motivated and preparing for college mathematics.

A representative of the North Dakota University System provided information regarding alignment of K-12 content standards with entry into higher education. The testimony indicated there is collaboration between the K-12 and university faculty regarding vertical curriculum alignment. The next step in vertical curriculum alignment is to determine the scalability of rubrics and assessments at the state level. Placement of students in college courses is guided by the State Board of Higher Education and ACT scores, as well as complimentary University System procedures which are cross referenced with the ACT scores. The state participates in the SBAC high school assessment, which uses a one through four scoring system on its assessments. The testimony contended the scoring system can make it difficult to cross reference with ACT scoring, which uses a 36-point system.

State Assessment Process

Because state law requires the state assessment be aligned to state standards, DPI will initiate a request for proposals process for a state test in the spring of 2017 after state standards in mathematics and English are adopted. The test will be administered to students in the spring of 2018 and will be aligned to the mathematics and English standards that were used by teachers during the 2017-18 school year.

The state requires a request for proposal process to select a company to develop the tests to be administered to students in the state. According to a representative of DPI, an assessment task force met numerous times over the course of a year to discuss the requirements and considerations that go into developing a standardized test. The task force developed a list of recommendations to include in the request for proposal for the next assessment. Although it was reported the recommendations were continuing to be debated and processed, it has been determined the assessment should be computer-based while allowing for a paper alternative option.

The Superintendent of Public Instruction provided information regarding the reauthorization of the Every Student Succeeds Act and the North Dakota assessment task force. Along with 3 years of trending data from 2015-17 under the same assessment, test items and scores under a new assessment in 2018 will be analyzed and the old assessment and the new assessment will be calibrated. Because the bids in the request for proposals had not been received, the Superintendent of Public Instruction indicated the cost of the new assessment was not known. However, it is likely the new assessment will be more expensive than the assessment the state has been utilizing, which is approximately $27 per student. A new hybrid assessment is likely to cost between $37 and $45 per student. Between 50,000 and 55,000 students take the assessment in a typical year. Because the assessments being developed will continue to be spring assessments, schools will use the results to plan class schedules and professional development for the following school year.

Availability of Existing and Proposed Assessment Models

The committee received a report from a representative of SBAC regarding assessment models, testing protocols, and the assessment development process of the consortium. According to the testimony, the assessments were designed to be similar to what will be expected of students in college and in careers following high school. The testimony contended the consortium created the most comprehensive set of tools, supports, and resources incorporated into an online assessment.

The assessment is adaptive and adjusts the test difficulty as students proceed through the test to ensure equal information is given to each student. An adaptive test ensures every student is challenged by the assessment regardless of individual ability. The Smarter Balanced Assessment Consortium supports 10 languages on mathematics assessments, including live American sign language videos. As a result, over 90 percent of the primary languages students speak are covered.

Under SBAC, each state maintains its sovereignty. However, the consortium maintains consistency among the states by allowing the states to direct policy through an executive committee elected by the states. Every state is required to agree before the consortium adopts a new policy.

The representative of the consortium testified the only fundamental way to improve teaching and learning is to provide teachers the resources needed to help students learn more efficiently. The consortium works to achieve that by:

- Supporting professional learning through a digital library helping teachers think about how to measure the assessment and standards in a different way.
- Providing a system of interim assessments that are flexible, open, and used for actionable feedback.

- Providing a summative year-end assessment.

The representative of SBAC contended open source technology used by the consortium is the best method to ensure states will be able to obtain the highest quality software for the lowest price. The technology likely will have the ability to support 50,000 concurrent users. States have flexibility to change the content of the assessments by adding or removing standards or emphasizing certain areas while continuing to use the same blueprint for the assessments.

The representative of SBAC indicated there is a growing body of evidence showing the assessment is aligned to the Common Core Standards. Although there are a variety of assessment results states may release, the consortium recommends states release the total score of a student in English and mathematics to the student. A state also may release subsets of information regarding the mathematics scores to the students. The subsets include information regarding a student's knowledge of concepts and procedures, data analysis and problem solving, and communication and reasoning skills. A state may release additional information regarding student performance in English in the areas of reading, writing, listening, and research to allow a parent to see how a child is performing in a number of areas. The consortium uses the assessment result information to create percentiles and technical reports that are made available to states. The information also is used to create scale scores showing the range of a student's performance associated with an achievement level.

A representative of ACT Aspire provided information regarding assessment models, testing protocols, and the assessment development process of ACT Aspire. The ACT Aspire assessment system tests students in grades 3 through 10 and is benchmarked to track progress toward achievement of college and career readiness. The testimony indicated the earlier information is provided to a student regarding progress toward college and career readiness, the more likely the student is to achieve the student's goals.

The ACT Aspire assessments were designed to allow educators to intervene early to impact college and career readiness. Because learning gaps occur early and become harder to remediate the older a student becomes, ACT Aspire begins testing in grade 3 to identify learning gaps and help students get back on track. ACT Aspire has five achievement tests that assess the same areas as the ACT college entrance test--English, mathematics, reading, science, and writing. Each subject area on the tests indicates whether a student is on track for readiness and advancement at each grade level. The ACT Aspire also provides information on career readiness. The assessments are provided entirely online, and teachers can have results within 15 minutes.

In addition to the assessments, ACT Aspire offers support for educators and schools. The ACT Aspire program management team provides access to training in the form of webinars, live onsite training, access to manuals and assessment prep materials, videos, and call-center support.

According to the representative of ACT Aspire, the company bases the design of the products on empirical evidence. ACT Aspire administers a curriculum survey every 3 years to K-12 educators, college educators, and career stakeholders to help determine what is currently important for college and career readiness. The survey information is used in the design of the products and to optimize instructional and testing time.

ACT Aspire tracks a student from when the student takes the ACT through the second year of college. A student may use the information to compare the results of college courses with ACT scores.

The price charged for the online assessment is $20 to $23 per student depending on the level of augmenting the state requests. The paper assessment would be $7 more than the price of the online assessment depending on augmentation.

A representative of Data Recognition Corporation provided testimony indicating that in addition to SBAC and ACT Aspire, there are six to eight major assessment vendors in the third through eighth grade testing market which the state should consider.

The Superintendent of Public Instruction formed a task force to provide input and recommendations as the Superintendent of Public Instruction selects the state assessment system. The assessment system will be selected in 2016 with implementation scheduled for winter or spring 2017.

Conclusion

The committee makes no recommendation regarding its study relating to content standards and assessments.

CAREER AND TECHNICAL EDUCATION

Evolution of Career and Technical Education

At the time of this country's founding, there were three ways in which an individual could be prepared for work. The first way was an apprenticeship program, which could have been voluntary or involuntary. The latter situation came about as a way of addressing child welfare issues. Whether voluntary or involuntary, apprenticeship programs generally provided food, clothing, and shelter; religious instruction; basic instruction in the traditional 3 Rs; and instruction in a trade or occupation. The second way in which an individual could be prepared for work involved a familial relationship, in which the fundamentals of a trade or occupation were handed down from elders to children. The third way involved observation and imitation, but little actual or formal instruction. It was not until the early 1900s that vocational education, as we think of it today, began to emerge.

Significant federal intervention in vocational education began with passage of the federal Smith-Hughes Act of 1917, also known as the National Vocational Education Act. Its primary purpose was to provide funds for the training of individuals who have entered upon or who are preparing to enter upon the work of the farm. In attempting to meet its primary purpose, the legislation required the establishment of a Board of Vocational Education, which in turn caused states to establish a board that was separate from the standard State Board of Education. The result was two distinct governance structures and a decades-long separation of vocational and academic education.

This separation was promoted by another feature of the Smith-Hughes Act of 1917, which permitted the expenditure of funds on the salaries of teachers with vocational experience, but not on the salaries of academic teachers. The intent of Congress was to ensure that vocational dollars were not redirected to nonvocational purposes. The practical effect was further polarization of vocational and academic education.

During the 1930s, Congress began to place an emphasis on vocational education within the junior or community college setting. After addressing the unemployment of the 1930s and the war effort of the 1940s, the United States began its transition to a peace-time economy. Beginning in the 1950s, light industries were emerging, as were various health occupations, and with them, there was steady growth in the junior college system and adult education.

During the 1960s, vocational education experienced especially heavy enrollment growth while technological advances were producing employment dislocation. The gap between the affluent and the disadvantaged widened and poverty in areas of economic depression could no longer be ignored. Congress responded by enacting the Manpower Development and Training Act, followed by the Vocational Education Act of 1963.

The 1963 legislation continued to encourage the separation of vocational education and academic education. By 1968 pertinent amendments were setting aside additional dollars to expand offerings for students with special needs and disadvantaged students. Within a decade, vocational education funding was made available to assist students with limited English language proficiency, to assist Native American students, and to eliminate gender bias and gender stereotyping in vocational education.

Education reforms focusing on secondary education began in the early 1980s, prompted by concern about the nation's declining competitiveness in the international market, the relatively poor performance of American students on tests of educational achievement (both nationally and internationally), and complaints from the business community about the low level of skills and abilities found in high school graduates entering the workforce. This reform came in two waves. The first wave called for increased effort from the current education system--more academic course requirements for high school graduation, more stringent college entrance requirements, longer school days and years, and an emphasis on standards and testing for both students and teachers.

Beginning in the mid-1980s, a second wave of school reform arose, based in part on the belief that the first wave did not go far enough to improve education for all students. The second wave called for changes in the way schools and the educational process were organized. While restructuring proposals included school choice and site-based management, there was an emphasis on improving the school-to-work transition for nonbaccalaureate youth by creating closer linkages between vocational and academic education, secondary and postsecondary institutions, and schools and workplaces.

At the federal level, the Carl D. Perkins Vocational Education Act of 1984 continued the congressionally held premise that vocational education programs are essential to the nation's future as a free and democratic society. The Act was designed to improve the skills of the labor force, provide job opportunities for adults, and provide equal opportunities for adults in vocational education. Its successor, the Carl D. Perkins Vocational and Applied Technology Education Act of 1990, was enacted in 1990 and known as "Perkins II." Under Perkins II, the United States Department of Education provided formulaic grants to state boards of vocational education. The distribution of grant funds within a state was directed to priority items established by the state in accordance with an approved state plan for vocational-technical education. Local education agencies and postsecondary institutions were eligible to receive subgrants.

Four years later, Congress enacted the School-to-Work Opportunities Act of 1994. This Act also was designed to address the nation's shortage of skilled workers by the use of partnerships between educators and employers. School-based and work-based instructional components were integrated with the thought that if students were given knowledge, skills, abilities, and information about specific occupations, as well as the labor market, they would be better equipped to transition from school to work. Key elements of the Act included collaborative partnerships, integrated curricula, technological advances, adaptable workers, comprehensive career guidance, work-based learning, and a step-by-step approach.

In 1998 Congress passed another iteration of the Carl D. Perkins Vocational and Technical Education Act. This time, Congress focused on two areas--increased accountability and the provision of increased flexibility with respect to the states' use of funds. The Act was reauthorized in 2006, at which point it became known as the Carl D. Perkins Career and Technical Education Improvement Act. The terminology change from vocational education to career and technical education is one of the major areas that was subject to revision in that reauthorization. Other areas included increasing the focus on the academic achievement of CTE students, strengthening the connections between secondary and postsecondary education, and improving state and local accountability.

Career and Technical Education Opportunities

A representative of the Department of Career and Technical Education provided information regarding CTE in North Dakota. The Department of Career and Technical Education focuses on technical assistance to schools, programs, teachers, and student organizations. The department helps CTE programs adapt to industry standards, assists programs in selecting curriculum that matches those standards, and evaluates programs every 5 years with either an onsite visit or through a desk audit. The department also provides technical assistance to middle schools and to the public and tribal 2-year colleges and provides elementary programming in science, technology, engineering, and mathematics and entrepreneurship. The department assists teachers in the regular certification process and sets licensing requirements for industry professionals who want to teach at the secondary or postsecondary level in the trades, health sciences, and information technology areas and provides the education and training those professionals need to become instructors. The department provides professional development for CTE teachers and administrators. An essential component of the technical assistance is providing leadership and coordination for CTE student organizations that operate in CTE program areas. The career and technical education programs include agriculture; business; career development; family and consumer sciences; health sciences; information technology; marketing; technology and engineering; and trade, industry, and technical.

The representative of the Department of Career and Technical Education testified it is a challenge to provide access to CTE programs for schools and students across the state. Distance continues to be the chief obstacle, especially in delivery of a hands-on curriculum like CTE programs. Each of the 148 high school districts in the state are required to offer two credits in CTE. Eleven area centers comprising 93 member districts provide programming to schools. In addition, cooperative arrangements provide incentives to schools that offer CTE programs through interactive video, online, or through sharing instructors with neighboring districts. Emerging technology is another cooperative effort between schools that rotate emerging technology equipment on a 4- or 6-week basis to all member schools.

Area centers were created in the mid 1970s to allow students to attend for part of the day and to receive their academic courses at their home school. The model has been widespread across the country and has been effective in providing a school more CTE program options than the school could provide alone. Each member district in an area center must have access to all area center programs and offer a minimum of five CTE programs. In 2007 a virtual area center was developed, and there are now six virtual centers in the state which have no physical building, but may use the classroom and shops of existing schools. The virtual centers benefit from the cooperative effort that makes area centers a viable delivery option for member districts.

In the 2014-15 school year there were 79 schools participating in 37 CTE courses delivered through interactive video, and 63 schools participating in 29 online CTE courses serving a total enrollment of 1,230 students. Although participation has increased, access and availability problems remain in the ability of many schools to offer a variety of CTE programs. The North Dakota career and technical education scholarship is available to students who take four CTE credits and two or more credits in a single area of interest, or two credits in a coordinated plan for the academic scholarship as a replacement for foreign language.

Emerging technology consortiums rotate high-tech type equipment modules between schools. Seven consortiums involving 99 schools participate in emerging technology. Under the program, state funding has been used for purchasing equipment and professional development for teachers. School districts provide local funding for the majority of the teacher training, the transportation cost to move equipment between member schools, administrative costs to track usage, and scheduling. The equipment modules supplement existing curriculum and are integrated by the teacher, but are not intended to be a standalone experience for students.

The role of the career advisors program, which was established as a result of 2009 House Bill No. 1400, is to assist school counseling programs and help schools meet the 1 to 300 counselor-to-student ratio required by that legislation. A career advisor must work under the direction and supervision of a school counselor specifically in the career domain. A career advisor is permitted to cover 30 percent of the counseling time needed for a school to meet the ratio. Career advisors disseminate labor market information to students and provide career exploration experiences for students.

The testimony indicated schools that have career development counselors generally have a higher percent of students qualifying for the North Dakota scholarship--28.69 to 17.58 percent--and the ratio of academic to CTE scholarships is 51 to 49 percent, compared to 60 percent academic to 40 percent CTE scholarships for schools that do not have a career development counselor.

Funding and Evaluation of Career and Technical Education Opportunities

A representative of the Department of Career and Technical Education provided information regarding funding and evaluation of CTE programs. The focus of the evaluation process is program improvement. The department evaluates each CTE program using 12 standards--instructional planning and organizing, instructional materials utilization, instructional personnel, enrollment and student-teacher ratio, equipment and supplies, instructional facilities, safety and sanitation training and practices, program advisory committee and community relations, leadership development opportunities and career and technical student organization, workplace experience and cooperative learning experience, special populations, and educational equity. The career and technical education programs in schools and colleges are evaluated on a 5-year rotating basis. Each program is evaluated by a specialist in that area.

When a school is on the evaluation schedule, all CTE programs and the administration within a school receive a program pre-evaluation questionnaire to assist the Department of Career and Technical Education focus evaluation efforts. Within 30 days of the onsite evaluation, the school receives an official report of the evaluation. A plan of action is sent to the school for each recommendation made in the report. A school must respond to each recommendation with corrective action within 90 days. Upon the conclusion of an evaluation, each instructor and administrator is sent a satisfaction survey to provide feedback on the department staff and the evaluation process.

For the 2015-17 biennium, the Department of Career and Technical Education received a general fund appropriation of $33,920,062, which was reduced by $1,373,763 after the general fund budget allotment to $32,546,299. The funding is used for salaries, operating costs, project grants, and program grants, and is intend to serve as an incentive for schools to offer quality CTE programming and to offset the higher cost of operating a CTE program. To receive funding, a CTE program must meet the following requirements:

- A minimum of two credits per year must be taught (trade and industry and health sciences require three credits).
- A minimum of seven students participating in each course for schools with grades 9 through 12 enrollment of more than 100 students, a minimum average of seven students participating per course for schools with 50 to 100 students, and no minimum participating for schools with fewer than 50 students.
- A career and technical education-certified teacher must teach the course.
- The curriculum must be based on state, national, or industry standards for each program area.
- The facilities and equipment must meet standards.
- An advisory committee must meet at least two times a year.

Conclusion

The committee makes no recommendation regarding its study of CTE in the state.

RESTRAINT AND SECLUSION IN SCHOOLS

Background

Definitions

According to the United States Department of Education, the term "restraint" may refer to either physical restraint or to mechanical restraint.

"Physical restraint" refers to a "personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location."

"Mechanical restraint" refers to the "use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraints for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without risk of harm."

According to the United States Department of Education, "seclusion" means the "involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming."

Federal Law

Congress has provided a set of national standards that must be adhered to by psychiatric treatment facilities. The standards differ, depending on whether the facility is a nonmedical community-based facility for children and youth or a health care facility. The former includes group homes. The latter includes hospitals, intermediate-care facilities, or other health care facilities, if they receive federal funds.

The standards require facilities to comply with the general principle of protecting and promoting an individual's right to be free from restraint and seclusion for purposes of discipline or convenience and provide restraint or seclusion only may be used to ensure the physical safety of the individual or others and only upon the written order of a physician or other duly authorized licensed practitioner. Medications and drugs used to control behavior and which are not a standard treatment for the individual's condition are considered a form of restraint.

If the facility is a "non-medical, community-based facility for children and youth," the use of restraint or seclusion is limited to emergency situations within which it is necessary to protect the immediate physical safety of the individual or of others. Restraint and seclusion may be utilized only by individuals who have been trained and certified by a state-recognized body in a list of competencies, that include understanding the physiological and psychological impact of restraint and seclusion, monitoring for physical signs of distress, and preventing the use of restraint and seclusion.

Because, in these facilities, time-outs and physical escorts are not defined as restraint or seclusion, the new standards do not apply to such procedures. However, in these facilities, mechanical restraints and drugs may not be used as a form of restraint. Seclusion may be used only when a staff member is engaged in face-to-face monitoring of the individual.

The United States Department of Education has identified 15 principles that it believes states and school districts should consider if they elect to develop and implement policies and procedures related to the restraint or seclusion of a student. These principles are designed to ensure that restraint or seclusion is not used in a school, unless there is a threat of imminent danger i.e., of serious physical harm to the student or others. Under such a circumstance, the restraint or seclusion may be used only in a manner that protects the safety of all students and adults at the school.

The United States Department of Education suggests that the documentation should be used to prevent the future use of restraint or seclusion by creating a record for consideration when developing a plan to address a student's needs or when developing a plan for staff training.

State Laws

A 2015 report indicates only 22 states had meaningful protections in their statutes and regulations protecting all children from both restraint and seclusion. The referenced states are Alabama, Alaska, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Maine, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming.

According to the report, some states offer meaningful protections against restraint or seclusion only for students with disabilities. Sixteen states require that an emergency condition in which there is a threat of physical danger exist before restraint can be used on any student. Two states ban seclusion for all students and five states ban seclusion for students with disabilities. North Dakota, together with Idaho, Mississippi, New Jersey, and South Dakota is credited in the aforementioned report with having no laws that protect students from seclusion or restraint.

Testimony and Committee Considerations

A representative of DPI provided information regarding the use of restraint and seclusion in public schools. In July 2009 Education Secretary Arnie Duncan sent a letter to the states and territories urging the development or review and, if appropriate, revision of state policies and guidelines to ensure every student is safe and protected from being unnecessarily or inappropriately restrained or secluded. Following Secretary Duncan's letter, the Office of Elementary and Secondary Education was tasked to work with state officials to discuss the status of each state's efforts regarding limiting the use of seclusion and restraint to protect students.

North Dakota does not have a restraint and seclusion law that applies to all students in K-12. However, there are laws prohibiting corporal punishment (Section 15.1-19-02) and pertaining to the restraint and seclusion of developmentally disabled individuals (Section 25-01.2-10). There are no federal law mandating schools to have a restraint and seclusion policy. In 2012 the United States Department of Education published a document indicating 15 principles that highlight how schoolwide behavioral interventions can significantly reduce or eliminate the use of restraint or seclusion. These guiding principles offer states, school districts, and education leaders a framework for developing appropriate policies related to restraint and seclusion to ensure the safety of adults and children. The Superintendent of Public Instruction does not require school districts to collect or submit information regarding the use of restraints or seclusion, nor does DPI keep records of the number of incidents of restraint and seclusion in schools.

The committee received testimony indicating the North Dakota School Boards Association developed a sample restraint or seclusion policy due to the absence of requirements in state law and the federal government's heightened focus on these topics. The association created a policy template on restraint and seclusion guidelines that combines guidance from the 2012 Department of Education publication with policy standards gleaned from the Eighth Circuit of Appeals rulings and state law in an effort to establish reasonable and practical protections for students and staff in school districts.

The representative of the School Boards Association stated the restraint or seclusion policies created by the association apply to all students to keep the entire student body safe, to prevent claims of discrimination, and to ensure that regardless of the student involved, restraint or seclusion is implemented with standards established by local school boards. A school district board may adopt the template in its entirety to use as its own policy. A parent who believes a child was inappropriately restrained or secluded may file a report of suspected child abuse with the county social services office or contact local law enforcement to file a complaint.

According to the School Boards Association, 47 percent of school districts in the state have adopted a restraint and seclusion policy. An additional 47 percent have not adopted a policy, and there is no information available for the remaining 6 percent. As of 2009, the United States Department of Education Office of Civil Rights requires all schools to report the number of incidents of restraint and seclusion that occur. In North Dakota, from 2009 to 2011, there were 1,249 reports of restraint and seclusion being used in schools, 1,105 of which involved special education students.

A representative of Bismarck Public Schools provided information regarding the restraint and seclusion policies of the Bismarck school district. The school district has a policy that restricts the use of restraint and seclusion for all students. The testimony indicated the district builds a plan for a student who may be subject to restraint or seclusion to ensure the student is successful by including the parents of the student, the teacher, the principal, and a teacher of special services. The plan developed for a student includes a behavioral intervention plan and calls for instructing the student on how to self-regulate and recognize behaviors that cause the student to have to modify behavior to be successful. The final element of a plan is a crisis plan if a student's behavior becomes unsafe for the student or others.

If a crisis occurs, a teacher will attempt to de-escalate the situation verbally and calm the student by offering a distraction. If the verbal de-escalation is unsuccessful and there is concern the student may injure the student or others, the teacher may suggest the student walk to a calming room where the student can calm and self-regulate when overwhelmed. Each plan is built with the intention of never requiring the use of a calming room, and the focus is on teaching de-escalation techniques to educators and giving the educators schoolwide support. Standards created in 2011 regulate the rooms used for physical seclusion. All dangerous items in the room are removed.

The testimony from the representative of Bismarck Public Schools indicated no psychotropic medication is used on students as a means of restraint. Physical restraint and seclusion is used only in rare circumstances when a student's behavior poses an imminent danger of serious physical harm to the student or others. Restraint and seclusion is never used as punishment, discipline, retaliation, or coercion, and is used only as a last resort when other methods have failed. All incidents of restraint and seclusion are documented and reported to school district administrators, and administrators review each report to determine if the strategy and plan is working and if the policies are being followed. Parents of a student are contacted immediately when an incident involving restraint or seclusion occurs.

According to testimony from a representative of the Crisis Prevention Institute, 35 states have legislation or regulations regarding restraint and seclusion use in education and school settings. Although there is no federal legislation that addresses restraint and seclusion use in schools, the "Keeping All Students Safe Act" has been proposed for the past 5 years. The testimony contended a benefit of having a state law regarding restraint and seclusion is the ability to require reporting for the purpose of gathering data on the use of restraint and seclusion. Twenty-five of the 35 states that have passed legislation on restraint and seclusion have reporting requirements.

According to the testimony from the representative of the Crisis Prevention Institute, it is important to consider a number of factors when developing laws and policies on restraint and seclusion. It was contended a good policy always starts with clear and concise definitions. A law or policy also should address the limiting of high-risk positions in restraint and seclusion situations and include de-escalation considerations to reduce the need to restrain or seclude a student.

A representative of the Protection and Advocacy Project argued the state needs a reporting mechanism to collect the required data so that policymakers have the information necessary to address problems. The representative of the Protection and Advocacy Project requested the committee to create a task force on restraint and seclusion. However, committee members generally agreed creating such a group was beyond the scope of the committee's authority and stakeholders have the ability to organize meetings and share knowledge and information without a directive from the committee.

A representative of the North Dakota seclusion and restraint task force, which was created in March 2016 as a joint effort of numerous groups, including DPI and the Protection and Advocacy Project, provided information to the committee regarding the findings and recommendations of the task force. The task force, which includes over 40 members, has received presentations on best practices regarding restraint and seclusion from the Crisis Prevention Institute, the North Dakota Youth Correctional Center, the North Dakota Boys and Girls Ranch, Bismarck Public Schools, and representatives of the developmental disability sector. The task force worked to develop recommendations to protect students and staff while ensuring policies are developed at the local level.

The committee considered a bill draft to require reporting to the Superintendent of Public Instruction by school districts that adopt a policy regarding restraint and seclusion. Committee members expressed concern the bill only required reporting by school districts that have adopted a policy and did not address school districts with no policy.

The committee considered a bill draft to require school districts to adopt a policy regarding restraint and seclusion, and report any incidents to the parents of the student restrained or secluded. Concerns were expressed with respect to appropriate definitions of restraint and seclusion and with respect to reporting requirements, particularly for small school districts. Committee members generally agreed it is difficult to reach a consensus regarding definitions and reporting requirements and its study raised a number of questions that require further information.

Recommendations

The committee makes no recommendation with respect to its study regarding restraint and seclusion.

NORTH DAKOTA UNITED

The committee was informed various Century Code provisions and Section 6 of Article VIII of the Constitution of North Dakota refer to the "North Dakota Education Association," which no longer exists after its merger with the North Dakota Public Employees Association into North Dakota United. The committee requested a bill draft to revise the Century Code references.

A representative of the North Dakota School Boards Association presented information regarding the effect of the North Dakota United bill draft on the membership requirements, appointment processes, and authority of the North Dakota Education Association. The representative of that association testified in opposition to the bill draft arguing the bill draft is not a technical corrections bill draft because North Dakota United is an entirely new group and is different from the North Dakota Education Association. Because North Dakota United represents education support professionals, food service workers, maintenance and trade workers, transportation workers, grounds keeping staff, security personnel, health services personnel, higher education employees, state employees, county employees, and municipal employees, changing the references from the North Dakota Education Association to North Dakota United would allow for input from an entity that is much more diverse. It was argued the perspective of North Dakota United is not necessarily one which is connected to the classroom or the delivery of K-12 education services.

Under Section 6 of Article VIII of the Constitution of North Dakota, the President of the North Dakota Education Association is a member of the group that selects candidates to recommend to the Governor nominees to be on the State Board of Higher Education. Because the organization no longer exists, the representative of the North Dakota School Boards Association argued if a member of North Dakota United were to participate in making a recommendation to the board, the recommendation may be in violation of the state constitution.

A representative of North Dakota United reported the way in which North Dakota United appoints members to committees has not changed since the merger, which occurred 3 years ago. Although the two organizations merged to form North Dakota United, education and public employee issues are addressed separately within the organization. The representative of North Dakota United contended there is no significant issue with a member of North Dakota United sitting on the recommending committee for the State Board of Higher Education.

Recommendation

The committee recommends Senate Bill No. 2030 to make technical corrections in Century Code to change references from the North Dakota Education Association to North Dakota United.

REPORTS

The committee received the following reports:

- A report from the Superintendent of Public Instruction regarding the financial condition of school districts.
- A compilation of annual school district employee compensation reports from the Superintendent of Public Instruction.
- A report from the Superintendent of Public Instruction regarding requests from schools or school districts for waivers of rules governing the accreditation of schools.
- A report from the Superintendent of Public Instruction regarding requests from schools or school districts for a waiver of Section 15.1-21-03 regarding high school unit instructional time.
- A compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide from the Superintendent of Public Instruction.
- A report from the Superintendent of Public Instruction regarding findings and recommendations of the School District Reporting Review Committee.
- A report from the Superintendent of Public Instruction regarding the implementation of a uniform system for the accounting, budgeting, and reporting of data by an early childhood education provider that received a grant distributed in accordance with Section 3 of 2015 Senate Bill No. 2151.
- A report from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the Education Standards and Practices Board.
- A report from a representative of the North Dakota Center for Distance Education regarding the capabilities of the Center for Distance Education.
- A report from the North Dakota Teacher of the Year regarding the teacher of the year award.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee was assigned the following responsibilities:

- Receive notice from the Teachers' Fund for Retirement (TFFR) Board of Trustees regarding any necessary or desirable statutory changes relating to the TFFR, pursuant to North Dakota Century Code Section 15-39.1-05.2.
- Approve terminology adopted by the Public Employees Retirement System (PERS) Board for TFFR provisions to comply with applicable federal statutes or rules, pursuant to Section 15-39.1-35.
- Receive a report from the TFFR Board of Trustees regarding the annual actuarial test of the contribution rate for TFFR, pursuant to Section 15-39.1-10.11.
- Receive notice from firefighters relief associations of the association's intent to provide a monthly service pension, pursuant to Section 18-11-15.
- Approve terminology adopted by the PERS Board to comply with federal requirements, pursuant to Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2.
- Receive periodic reports from the Office of Management and Budget (OMB) Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions, pursuant to Section 54-06-31.
- Receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service, pursuant to Section 54-06-32.
- Receive a biennial report from OMB summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service, pursuant to Section 54-06-33.
- Receive a biennial report from OMB summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state, pursuant to Section 54-06-34.
- Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans, pursuant to Section 54-35-02.4.

Committee members were Senators Karen K. Krebsbach (Chairman), Dick Dever, Ralph Kilzer, Carolyn C. Nelson, Erin Oban, and Nicole Poolman and Representatives Pamela Anderson, Randy Boehning, Jason Dockter, Jessica Haak, Gary Kreidt, Vernon Laning, and Kenton Onstad.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

BACKGROUND

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement.

The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides any legislation enacted in contravention of these requirements is invalid, and benefits provided under that legislation must be reduced to the level in effect before enactment.

Teachers' Fund for Retirement

Former Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when TFFR was established with the enactment of Chapter 15-39.1.

The Teachers' Fund for Retirement became effective July 1, 1971, and is governed by its board of trustees. The State Investment Board is responsible for the investment of the trust assets, although the TFFR Board of Trustees establishes the asset allocation policy. The Retirement and Investment Office is the administrative agency for TFFR. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan.

All certified teachers of a public school in the state participate in TFFR, including teachers, supervisors, principals, and administrators. Noncertified employees, such as teachers' aides, janitors, secretaries, and drivers, are not allowed to participate in TFFR. Eligible employees become members on the date of employment.

The district or other employer that employs a member contributes a percentage of the member's salary. This percentage consists of a base percentage of 7.75 percent, plus additions. Effective July 1, 2008, the employer contribution rate became 8.25 percent; effective July 1, 2010, the employer contribution rate became 8.75 percent; effective July 1, 2012, the employer contribution rate became 10.75 percent; and effective July 1, 2014, the employer contribution rate became 12.75 percent. However, the employer contribution rate will revert to 7.75 percent when TFFR is 100 percent funded on an actuarial basis. The contribution rate will not automatically increase if the funded ratio later falls below 100 percent.

Prior to July 1, 2012, all active members contributed 7.75 percent of salary per year to TFFR. The employer may "pick up" the member's contributions under the provisions of Internal Revenue Code Section 414(h). The member contribution rate was increased from 7.75 to 9.75 percent effective July 1, 2012, and increased to 11.75 percent effective July 1, 2014. The 4 percent added to the member contribution rate will remain in effect until TFFR is 100 percent funded on an actuarial basis. At that point, the member contribution rate will revert to 7.75 percent. The member's total earnings are used for salary purposes, including overtime and nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

Members who joined TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. Final average compensation, for purposes of determining retirement benefits, is the average of the member's highest three plan year salaries for Tier 1 members or five plan year salaries for Tier 2 members. Monthly benefits are based on one-twelfth of this amount. Tier 1 members are eligible for a normal service retirement benefit at age 65 with credit for 3 years of service, or if earlier, when the sum of the member's age and years of service is at least 85. Effective June 30, 2013, Tier 1 members who are at least age 55 and vested--3 years of service--as of the effective date, or if the sum of the member's age and service is at least 65, are eligible for normal service retirement benefits and are grandfathered. Those who do not meet these criteria as of June 30, 2013, may retire upon normal retirement on or after age 65 with credit for 3 years of service, or earlier, if the sum of the member's age is at least 90, with a minimum age of 60. A Tier 2 member may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if the sum of the member's age and years of service is at least 90. Effective July 1, 2013, Tier 2 members may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if the sum of the member's age and service is at least 90, with the added requirement that the member has reached a minimum age of 60.

The monthly retirement benefit is 2 percent of final average monthly compensation times years of service. Benefits are paid as a monthly life annuity, with a guarantee that if the payments made do not exceed the member's contributions plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

To receive a death benefit, death must occur while being an active, inactive, or a nonretired member. Upon the death of a nonvested member, a refund of the member's contributions and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit or a life annuity of the normal retirement benefit "popping-up" to the original life annuity based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

A Tier 1 member leaving covered employment with fewer than 3 years of service and a Tier 2 member leaving covered employment with fewer than 5 years of service is eligible to withdraw or receive a refund benefit. Optionally, a vested member may withdraw the member's contributions plus interest in lieu of the deferred benefit otherwise due. A member who withdraws receives a lump sum payment of the member's employee contributions plus interest credited on these contributions. Interest is credited at 6 percent per year.

At times, TFFR has been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

Public Employees Retirement System

The Public Employees Retirement System is governed by Chapter 54-52 and includes the combined PERS fund--PERS main system, the judges' retirement system, the National Guard retirement system, the law enforcement with prior main service system, the law enforcement without prior main service system, and an optional defined contribution

retirement plan--Highway Patrolmen's retirement system, Job Service North Dakota retirement plan, and retiree health benefits fund. The plan is supervised by the PERS Board and covers most public employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, can choose to be members. Officials appointed to office after that date are required to be members. Most North Dakota Supreme Court justices and district court judges are members of the plan, but receive benefits that differ from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the PERS Board. Political subdivision employees are not eligible to participate in the defined contribution retirement plan. The PERS Board also administers the uniform group insurance, life insurance, flexible benefits, and deferred compensation programs.

Members of the PERS main system and judges' retirement system are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 85. Members of the PERS main system and judges' retirement system first enrolled after December 31, 2015, are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 90. Members of the National Guard retirement system are eligible for a normal service retirement at age 55 and three eligible years of service. Members of the law enforcement retirement system are eligible for a normal service retirement at age 55 and 3 eligible years of service or when age plus service is equal to at least 85.

The retirement benefit for a member of the PERS main system is 2 percent of final average salary multiplied by years of service. The retirement benefit for a member of the judges' retirement system is 3.50 percent of final average salary for the first 10 years of service, 2.80 percent for each of the next 10 years of service, and 1.25 percent for service in excess of 20 years. The retirement benefit for members of the National Guard and law enforcement retirement systems is 2 percent of final average salary multiplied by years of service.

The surviving spouse who is the sole refund beneficiary of a deceased member of the PERS main system, the National Guard retirement system, or law enforcement retirement system who had accumulated at least 3 years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance. The preretirement death benefit may be a lump sum payment of the member's accumulated contributions with interest; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; a continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement; or a partial lump sum payment in addition to one of the annuity options. The surviving spouse of a deceased member of the judges' retirement system who had accumulated at least 5 years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest or 100 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. For members who are not vested nor have a surviving spouse, the benefit is a lump sum payment of the member's accumulated contributions with interest.

The standard form of payment for members of the main, National Guard, and law enforcement systems is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50 percent payable to an eligible survivor. The final average salary is the average of the highest salary received by a member for any 36 months employed during the last 180 months of employment.

Retirement System Contributions

Except for the employer contribution rate for the National Guard and the law enforcement retirement systems, contribution rates are specified by statute. The statutory rates were increased effective January 1, 2014, to address needs of the funds. These January 1, 2014, increases are scheduled to revert to the contribution rates in effect on July 1, 2013, following the first valuation of the PERS main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the PERS main system that is equal to or greater than 100 percent.

- The contribution rate for a member of the PERS main system is 7 percent, and the employer contribution is 7.12 percent.
- The employee contribution for the judges' retirement system is 8 percent, and the employer contribution is 17.52 percent.
- The contribution rate for a member of the National Guard retirement system is 4.5 percent, and the employer contribution is 7 percent.
- The contribution rate for a political subdivision member of the law enforcement retirement system with prior main service is 5 percent, and the employer contribution is 9.81 percent.

- The contribution rate for a Bureau of Criminal Investigation member of the law enforcement system with prior main service is 6 percent, and the employer contribution is 10.31 percent.
- The contribution rate for a political subdivision member of the law enforcement retirement system without prior main service is 5.50 percent, and the employer contribution is 7.93 percent.

Retiree Health Insurance Credit Fund

The 1989 Legislative Assembly established a retiree health insurance credit fund account with the Bank of North Dakota with the purpose of prefunding hospital benefits coverage; medical benefits coverage; prescription drug coverage under any health insurance program; and dental, vision, and long-term care benefits coverage under the uniform group insurance program for retired members of PERS and the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who have accumulated at least 10 years of service. The employer contribution under PERS was reduced by 1 percent of the monthly salaries or wages of participating members, including participating North Dakota Supreme Court justices and district court judges, and the money was redirected to the retiree health insurance credit fund. The 2009 Legislative Assembly approved Senate Bill No. 2154 to increase the employer contribution to 1.14 percent of the monthly salaries or wages of participating members. The fund provides a monthly credit for health insurance benefits of $5 multiplied by the retired members' years of service.

ACTUARIAL REPORTS

Teachers' Fund for Retirement

The committee received annual valuation reports on TFFR. The latest available valuation report of the consulting actuary was dated July 1, 2016, and this report addresses the material presented in that most recent valuation report. The primary purposes of the valuation report are to determine the adequacy of the current employer contribution rate, to describe the current financial condition of TFFR, and to analyze changes in TFFR's financial condition. In addition, the report provides information required by TFFR and various summaries of the data. Valuations are prepared annually, as of July 1 of each year, the first day of TFFR's plan and fiscal year.

Effective with the July 1, 2013, actuarial valuation, the TFFR Board of Trustees adopted an actuarial funding policy, which provides direction on how to calculate an actuarially determined contribution. In order to determine the adequacy of the 12.75 percent statutory employer contribution rate, the rate is compared to the actuarially determined contribution. The actuarially determined contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year closed period that began July 1, 2013. As of July 1, 2016, the actuarially determined contribution is 13.22 percent, compared to 10.26 percent on July 1, 2013. Therefore, the statutory employer contribution rate of 12.75 percent resulted in a contribution deficiency of 0.47 percent of payroll.

As of June 30, 2016, the actuarial value of assets was $2.23 billion, representing 104.9 percent of the market value of assets of $2.12 billion. This 104.9 percent falls within the 20 percent corridor, so no further adjustment to the actuarial value of assets is necessary. Guidelines in Actuarial Standard of Practice Statement No. 44, selection and use of asset valuation methods for pension valuations, recommends that asset values fall within a reasonable range around the corresponding market value. The actuarial asset method complies with these guidelines.

For the year ending June 30, 2016, the consulting actuary determined the asset return on a market value basis was 0.4 percent. The market value of plan assets decreased from $2.14 billion as of June 30, 2015, to $2.12 billion as of June 30, 2016. However, due to the 5-year smoothing method used to determine the actuarial value of assets, the actuarial value increased from $2.13 billion to $2.23 billion over that same time period. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 6.2 percent. This represents an experience loss when compared to the assumed rate of 7.75 percent. Based on the actuarial value of assets, the funded ratio increased to 62.1 percent, compared to 61.6 percent as of June 30, 2015. The net pension liability increased from $1,307,855,182 as of June 30, 2015, to $1,465,058,563 as of June 30, 2016.

The actuarial valuation report as of July 1, 2016, is based on financial data as of that date. Changes in the value of assets subsequent to that date are not reflected. The fund's cashflow (contributions minus benefit payments, refunds, and expenses) as a percentage of the market value of assets is a deficiency of 1.2 percent as of June 30, 2016, compared to a deficiency of 1 percent as of June 30, 2016.

As of July 1, 2016, the fund had 10,813 active members, 1,601 inactive vested members, 779 inactive nonvested members, and 8,249 retirees and beneficiaries. The average age of active members was 42.3 years, and active members have 12.1 average years of service. Average compensation for active members was $57,986. As of July 1, 2016, 7,563 retirees and 686 beneficiaries were receiving total monthly benefits of $15,602,746, with the average monthly benefit amount for the retirees and beneficiaries being $1,891.

Public Employees Retirement System

The committee received reports on actuarial valuations and reviews as of July 1, 2015, and of July 1, 2016, on the following four funds:

- Combined PERS fund;
- Highway Patrolmen's retirement system;
- Retiree health insurance credit fund; and
- Retirement plan for employees of Job Service North Dakota.

The valuations were performed to determine whether the assets and statutory contributions are anticipated to be sufficient to provide the prescribed benefits. The purpose of the actuarial valuations is to determine whether the contribution is sufficient to meet the long-term obligations to the members covered by the funds in accordance with the benefit provisions of the funds. This report reflects the data from the latest available valuation reports, dated July 1, 2016.

Combined Public Employees Retirement System Fund

The combined PERS fund is made up of the PERS main system, judges, National Guard, law enforcement with prior main system service, and law enforcement without prior main system service. For the combined PERS fund, the present contribution rates are not sufficient, based upon the actuarial assumptions and financing objectives approved by the PERS Board. The board has recommended contribution increases in previous legislative sessions and continues to review projected future performance to determine appropriate measures to mitigate the difference between the actuarial and statutory contribution rates.

The employer actuarial contribution requirements for fiscal year 2017 are:

	Actuarial Requirement	Statutory/Approved Contribution Rate
PERS main system	10.48%	7.12%
Judges	8.90%	17.52%
Law enforcement with prior main system service	8.08%	9.81%[1]
Law enforcement without prior main system service	6.44%	7.93%

[1]Contribution rate for Bureau of Criminal Investigation is 10.31%.

The following is a comparison of this year's actuarial contribution requirements to last year's requirements as a percentage of payroll:

	Fiscal Year 2016	Fiscal Year 2017
PERS main system	12.21%	10.48%
Judges	10.75%	8.90%
Law enforcement with prior main system service	9.78%	8.08%
Law enforcement without prior main system service	8.03%	6.44%

The following shows the age, service, and compensation based on data provided for active members as of July 1, 2016:

Category	Year Beginning July 1, 2016
PERS main system	
Number of active members	22,762
Average age	46.5
Average service credit	9.6
Total compensation	$1,007,764,043
Average compensation	$44,274
Judges	
Number of active members	56
Average age	57.4
Average service credit	10.4
Total compensation	$7,937,062
Average compensation	$141,733
Law enforcement with prior main system service	
Number of active members	498
Average age	37.3
Average service credit	6.6
Total compensation	$28,225,868
Average compensation	$56,678

Category	Year Beginning July 1, 2016
Law enforcement without prior main system service	
Number of active members	100
Average age	37.6
Average service credit	3.7
Total compensation	$4,621,494
Average compensation	$46,215
All active members	
Number of active members	23,416
Average age	46.3
Average service credit	9.6
Total compensation	$1,048,548,467
Average compensation	$44,779

There are 10,460 retired members and beneficiaries receiving monthly benefits as of July 1, 2016. Additionally, there were three pensioners receiving benefits under the special prior service plan. The special prior service plan was in effect July 1, 1966, through June 30, 1977. Any employees who worked beyond June 30, 1977, were covered under the defined benefit plan rather than the special prior service plan.

The following is a comparison of this year's actuarial funded ratio to the prior year's ratio for the combined PERS fund:

	July 1, 2015	July 1, 2016
Actuarial value of assets	$2,094,251,356	$2,265,277,641
Actuarial accrued liability	$3,052,446,539	$3,396,565,467
Funded ratio	68.6%	66.7%

The return on the market value of assets for fiscal year 2016 for the PERS fund was 0.5 percent, compared to 3.6 percent for the preceding year. The return on the actuarial value of assets for fiscal year 2016 for the PERS fund was 6.6 percent compared to the investment return assumption of 8 percent.

The combined market value of net assets of the PERS fund and the Highway Patrolmen's retirement system was $2,480,706,994, an increase of $42,320,457 compared to $2,438,386,537 a year earlier. This year's combined market value represents an increase of 1.7 percent from the market value 1 year earlier. The actuarial value of assets is determined by spreading market appreciation and depreciation over 5 years beginning with the year of occurrence. Interest and dividends are recognized immediately. This procedure results in recognition of all changes in market value over 5 years. This procedure is applied to the combined assets of the PERS fund and the Highway Patrolmen's retirement system income funds to determine the combined actuarial value of the systems. The combined actuarial value was $2,327,011,551 as of June 30, 2016.

Highway Patrolmen's Retirement System

The employer actuarial contribution requirement for fiscal year 2017 is 27.11 percent of payroll, and exceeds the statutory rate of 19.70 percent of payroll as of the valuation date by 7.41 percent. Last year, the actuarial contribution requirement was 21.42 percent and exceeded the ultimate statutory rate of 19.70 percent by 1.72 percent.

For July 1, 2016, the actuarial value of assets was $61,733,910, the actuarial accrued liability was $87,921,960, and the funded ratio was 70.2 percent; for July 1, 2015, the funded ratio was 73.5 percent. The actuarial value of assets is determined by spreading the market appreciation and depreciation over 5 years beginning with the year of occurrence. Interest and dividends are recognized immediately. This procedure results in recognition of all changes in market value over a 5-year period. On a market value basis, the assets had an investment return of approximately 0.46 percent in fiscal year 2016. The ratio of the actuarial value of assets to the market value of assets was 93.8 percent. Last year, this ratio was 88.3 percent.

Total active membership was 156, with an average age of 36.4 years and average years of service of 9.6. As of July 1, 2016, there were 123 pensioners and beneficiaries, with an average monthly benefit of $3,107.

Retiree Health Insurance Credit Fund

The actuarial consultant identified several highlights in the valuation year. The present rate of contributions is sufficient to meet the actuarially determined requirement for fiscal year 2017, based upon the actuarial assumptions and financing objectives approved by the PERS Board. The actuarial contribution requirement for fiscal year 2017 is 1.02 percent of payroll. The statutory rate of 1.14 percent of payroll is greater than the actuarially determined rate by 0.12 percent of payroll.

The return on the market value of assets for fiscal year 2016 was 0.79 percent. The return on the actuarial value of assets for fiscal year 2016 was 5.90 percent compared to the investment return assumption of 8 percent. For July 1, 2016, the fund's actuarial value of assets was $97,782,124, the actuarial accrued liability was $176,592,907, and the funded ratio was 55.4 percent; on July 1, 2015, the funded ratio was 69.4 percent. The primary cause of the reduction of the funded ratio was a relatively large increase in beneficiaries from 5,212 in 2015 to 10,220 in 2016. Senate Bill No. 1058 (2013), as approved by the Legislative Assembly, provided for the retiree health insurance credit to be portable to any health insurance programs beginning July 1, 2015. The ratio of the actuarial value of assets to the market value of assets was 95 percent.

The fund had 23,664 active members, with an average age of 46.2 years and average years of service of 9.5. On July 1, 2016, benefits were being paid to 10,320 individuals and the average benefit paid to these retired members and beneficiaries was $100 per month.

Retirement Plan for Employees of Job Service North Dakota

The Public Employees Retirement System Board assumed administration of the retirement plan for employees of Job Service North Dakota pursuant to legislation enacted in 2003. This is a closed retirement plan for employees of Job Service North Dakota. As of July 1, 2016, the plan has nine active participants with projected compensation of $564,684. There was one inactive employee as of July 1, 2016, with vested rights. There were 206 pensioners and beneficiaries as of July 1, 2016, receiving an average monthly benefit of $1,864.

The July 1, 2016, actuarial valuation reported the actuarial value of assets at $80,980,498. The actuarial accrued liability was $61,371,296. Effective July 1, 1999, the "scheduled contribution" is zero as long as the plan's actuarial value of assets exceeds the actuarial accrued liability. If, in the future, the liabilities of the plan exceed its assets, a "scheduled contribution" will be determined based on the funding policy adopted by the PERS Board. As of July 1, 2016, the market value of assets was 132 percent of the actuarial accrued liability. Therefore, the scheduled contribution at the end of the fiscal year ending June 30, 2016, was zero.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS

The committee established April 1, 2016, as the deadline for submission of retirement, health, and retiree health proposals. The deadline is intended to provide the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed legislators and those agencies entitled to the bill introduction privilege to submit proposals for consideration. The committee recognized that the committee retains the authority to waive this self-imposed deadline. The committee reviewed each submitted proposal and solicited testimony from proponents, retirement and health program administrators, interest groups, and other interested persons.

Under Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program. The committee referred the legislative proposals submitted to it to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of Gabriel, Roeder, Smith, and Company Holdings, Inc., in evaluating proposals that affected retirement programs and the services of Deloitte LLP in evaluating proposals that affected the public employees health insurance program. No legislative proposals affecting TFFR or the State Investment Board were submitted to the committee.

The committee obtained written actuarial information on each proposal over which the committee took jurisdiction. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators, interest groups, and affected individuals; the impact on the general fund or special funds, and on the affected retirement program; and other consequences of the proposal or alternatives to the proposal. Based on these factors, the committee makes a favorable recommendation, unfavorable recommendation, or no recommendation on each proposal.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to each proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 65th Legislative Assembly.

Public Employees Retirement System

The following is a summary of the proposals affecting PERS over which the committee took jurisdiction and the committee's action on each proposal:

Bill No. 109

Sponsor: Representative Todd Porter

Proposal: The bill would allow political subdivisions, on behalf of their firefighters, to enter into agreements with the PERS Board, for the purpose of extending the benefits of PERS to those firefighters.

Actuarial analysis: The consulting actuary reported the addition of a group of firefighters into either the law enforcement without prior main service system or the law enforcement with prior main service system does not add a new element of risk to either plan, assuming that the actual experience of firefighters (with respect to disability, death in service, retirement, etc.) is not materially different from that of other law enforcement entities participating in either plan. The actuarial impact of this change will depend specifically on the number and age of new members who would enter the law enforcement plan, whether or not the new members have participated in the PERS main system, and the amount of liabilities and assets (if any) that would be transferred into the law enforcement plan.

Committee report: Favorable recommendation.

Bill No. 117

Sponsor: Supreme Court

Proposal: The bill would amend Section 54-52-17 to allow an active Supreme Court or district court judge receiving disability retirement benefits to elect to continue participating in the uniform group insurance program for medical benefits coverage on the same basis the judge participated before becoming disabled. A judge who makes this election may continue participating in this uniform group insurance program for the remainder of their term of office or until age 65, whichever occurs first.

Actuarial analysis: The consulting actuary reported the amendment would not have a material actuarial impact on the health plan, as the employer would continue paying the health insurance premiums of the disabled judge.

Committee report: No recommendation.

Bill No. 118

Sponsor: PERS

Proposal: The bill would make the following changes:

- Change the definition of "retirement" and "retirement board;"
- Decrease the employee contribution rate on behalf of peace officers employed by the Bureau of Criminal Investigation by 0.5 percent of salary, from 6 percent of salary to 5.5 percent of salary, effective January 2018;
- Clarify disability benefits are only payable from the fund to which the member was actively contributing at the time the member became disabled;
- Add the same language to the defined contribution plan as the PERS main system defined benefit plan relating to the treatment of late payments of employer contributions;
- Allow the PERS Board to pay administrative expenses of the defined contribution plan from fines and fees collected from vendors; and
- Make other technical corrections and adjustments.

Actuarial analysis: The consulting actuary reported the only change with an actuarial impact is the reduction in the employee contribution rate on behalf of peace officers employed by the Bureau of Criminal Investigation by 0.5 percent. The reduction in the employee contribution rate is projected to slightly decrease the future funded ratio of the plan over the next 30 years. The funded ratio of the law enforcement with prior main service system is projected to decrease from 123.5 to 122.9 percent and the ratio of the law enforcement without prior main service system is projected to decrease from 138.9 to 138.2 percent.

Committee report: Favorable recommendation.

Bill No. 119

Sponsor: PERS

Proposal: The bill would make the following changes:

- Increase the employee contribution rate on behalf of temporary employees participating in the PERS main system and the defined contribution plan by 2 percent of salary, from 14.12 to 16.12 percent, effective January 2018;

- Increase the employee contribution rate on behalf of full-time employees participating in the PERS main system and the defined contribution plan by 1 percent of salary, from 7 to 8 percent, effective January 2018; and
- Increase the employer contribution rate for full-time employees participating in the PERS main system and the defined contribution plan by 1 percent of salary, from 7.12 percent to 8.12 percent, effective January 2018.

Actuarial analysis: The consulting actuary reported the bill is projected to have the following effect on the funded ratios of PERS main system plan assets:

	PERS Main System					
	Funded Ratio (Actuarial Value of Assets)			Funded Ratio (Market Value of Assets)		
Year	Current Provisions	Bill No. 119 Proposed Provisions	Change	Current Provisions	Bill No. 119 Proposed Provisions	Change
2016	66.1%	66.0%	-0.1%	70.5%	70.4%	-0.1%
2017	66.6%	66.5%	-0.1%	71.2%	71.1%	-0.1%
2018	66.7%	67.0%	0.3%	71.9%	72.2%	0.3%
2019	65.9%	66.8%	0.9%	72.5%	73.5%	1.0%
2020	65.7%	67.1%	1.4%	73.2%	74.7%	1.5%
2021	66.2%	68.2%	2.0%	73.8%	75.9%	2.1%
2026	68.4%	73.2%	4.8%	76.3%	81.5%	5.2%
2031	70.2%	77.9%	7.7%	78.4%	86.9%	8.5%
2036	71.9%	83.0%	11.1%	80.3%	92.6%	12.3%
2041	73.6%	88.5%	14.9%	82.3%	98.7%	16.4%
2046	75.4%	94.6%	19.2%	84.3%	105.6%	21.3%

Committee report: Favorable recommendation.

Bill No. 120

Sponsor: PERS

Proposal: The bill would require the medical benefits coverage of services provided by a health care provider by means of telehealth to be the same as medical benefits coverage for the same services provided by a health care provider in-person. The bill mandates the medical benefits coverage for telehealth services be expanded to all medical insurance plans in North Dakota. The bill does not cover telehealth services that are not medically necessary or if the policy would not provide coverage if the health services or expenses for health services were provided by in-person means.

Actuarial analysis: The consulting actuary reported PERS covers health services that are delivered by telehealth in the same manner as health services provided in-person. Female infertility, behavioral health, and sleep apnea were the top three diagnoses for the first year of this program, with 431 claims totaling $94,627. Telehealth has enabled patients in the rural and outlying areas of the state to continue to see their specialist residing in one of the state's four major cities without having to travel hundreds of miles.

Committee report: Favorable recommendation.

Bill No. 172

Sponsor: Representative Carlson

Proposal: The bill would amend Section 54-52.1-05, mandating that the term of a fully insured uniform group insurance contract for hospital benefits coverage, medical benefits coverage, or prescription drug coverage may not exceed 2 years. The amendment would require PERS to solicit bids for coverage after each biennium contract.

Actuarial analysis: The consulting actuary reported the amendment would not have a material actuarial impact on the health plan; however, there are potential implications to the health plan marketplace in North Dakota which could impact the long-term cost of coverage. The consulting actuary reported that health insurance carriers are less likely to competitively bid premium rates when the program will rebid in 2 years.

Committee report: Unfavorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

Compliance with Federal Law

The Teachers' Fund for Retirement Board of Trustees reported no action by the committee was required regarding any statutory changes to comply with federal requirements under Section 15-39.1-05.2. The Public Employees Retirement System Board reported no action by the committee was required under Section 39-03.1-29, 54-52-23, or 54-52.1-08.2 to approve terminology adopted by the PERS Board to comply with applicable federal statutes or rules.

The PERS Board reported no action by the committee was required under Section 15-39.1-35 to approve terminology adopted by the PERS Board for TFFR provisions to comply with federal statutes or rules.

Firefighters Relief Associations

The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5), which requires the committee to be notified by any firefighters relief association that implements an alternate schedule of monthly service pension benefits for members of the association.

Recruitment and Retention Bonuses

Pursuant to Section 54-06-31, the committee received periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. The following schedule is a summary of the information presented for the 2013-15 biennium and the first year of the 2015-17 biennium:

	July 1, 2013, to June 30, 2015						July 1, 2015, to June 30, 2016					
	Recruitment		Referral		Retention		Recruitment		Referral		Retention	
Agency	#	$$	#	$$	#	$$	#	$$	#	$$	#	$$
Governor					5	$99,824					1	($5,339)
Office of Management and Budget					2	35,518						
Information Technology Department	11	$15,250					10	$13,000				
State Auditor					55	190,500						
Tax Commissioner	1	2,500			7	43,000						
State Department of Health	9	37,850			1	6,539	9	38,862			5	29,285
Veterans' Home	6	464										
Department of Human Services	158	321,486	103	$41,713	16	212,765	99	153,476	60	$45,300	15	132,773
Industrial Commission	3	6,000			144	632,977	2	3,000				
Public Service Commission	1	5,000			5	23,480						
Bank of North Dakota	12	36,136			11	85,528	5	29,863			4	28,190
Workforce Safety and Insurance	1	2,677			40	114,842	7	18,146				
Highway Patrol			6	2,000					3	1,500		
Department of Corrections and Rehabilitation			5	1,200			2	1,063	11	2,200		
Department of Commerce											1	25,450
Agriculture Commissioner					1	4,000					1	4,000
Department of Transportation	47	259,999			2	3,000	39	165,316				
Total	249	$687,362	114	$44,913	289	$1,451,973	173	$422,726	74	$49,000	27	$214,359

Service Awards, Tuition, and Professional Organizations

Human Resource Management Services officials reported for the 2013-15 biennium, state employee service awards totaled $453,674; employer-paid costs of training or educational courses, including tuition and fees totaled $4,417,719; and employer-paid professional organization membership and service club dues for individuals totaled $1,149,860. The following schedule is a summary of the information presented for the 2013-15 biennium:

Report on State Employee Service Awards, Employer-Paid Tuition, and Employer-Paid Professional Organization Memberships and Service Club Dues
July 1, 2013, through June 30, 2015 (Sections 54-06-32 to 54-06-34)

Agency Number	Agency	Legislatively Authorized Full-Time Equivalent Positions	State Employee Service Awards ($ Amount)	Employer-Paid Costs of Training or Educational Courses, Including Tuition and Fees ($ Amount)	Employer-Paid Professional Organization Membership and Service Club Dues for Individuals ($ Amount)
101	Governor	18.00	$0	$0	$770
108	Secretary of State	31.00	2,465	225	10,377
110	Office of Management and Budget	130.50	3,530	26,800	8,983
112	Information Technology Department	340.30	21,784	739,473	126,710
117	State Auditor	53.80	3,087	28,435	7,835
120	State Treasurer	8.00	275	1,640	13,520
125	Attorney General	213.50	5,469	134,745	44,366
127	Tax Commissioner	134.00	12,173	61,033	3,220
140	Office of Administrative Hearings	5.00	185	5,420	1,455
188	Commission on Legal Counsel for Indigents	33.00	675	10,044	27,607
190	Retirement and Investment Office	19.00	1,533	30,964	11,380
192	Public Employees Retirement System	33.00	3,049	19,846	19,470
201	Department of Public Instruction	99.75	9,254	24,744	11,347
226	Department of Trust Lands	31.00	3,056	37,225	4,650
250	State Library	29.75	1,100	5,430	17,065
252	School for the Deaf	44.61	3,814	16,860	6,464
253	North Dakota Vision Services - School for the Blind	30.00	338	10,287	
270	Board of Career and Technical Education	27.00	900	2,155	6,475
301	State Department of Health	354.00	22,221	69,729	23,737
305	Tobacco Prevention and Control Committee	8.00	350	1,969	2,710
313	Veterans' Home	120.72	2,000	32,410	2,250
316	Indian Affairs Commission	5.00			
321	Department of Veterans' Affairs	8.00		3,890	1,390
325	Department of Human Services	2,201.08	97,391	513,252	10,075
360	Protection and Advocacy Project	27.50	3,598		
380	Job Service North Dakota	250.76	19,412	54,823	5,523
401	Insurance Commissioner	49.50	3,384	20,351	9,793
405	Industrial Commission	98.75	5,161	73,845	920
406	Department of Labor and Human Rights	13.00	834	9,199	2,390
408	Public Service Commission	44.00	2,869	15,694	2,975
412	Aeronautics Commission	6.00		805	534
413	Department of Financial Institutions	29.00	1,200	17,431	
414	Securities Department	9.00	1,419	10,457	4,540
471	Bank of North Dakota	179.50	8,949	600,668	335,921
473	North Dakota Housing Finance Agency	46.00	2,700	23,203	465
475	Mill and Elevator	135.00	6,750	36,060	45,431
485	Workforce Safety and Insurance	250.14	16,267	484,535	53,133
504	Highway Patrol	213.00	9,989	132,397	14,960
530	Department of Corrections and Rehabilitation	814.29	49,548	191,029	116,724
540	Adjutant General	246.00	12,012	61,361	30,896
601	Department of Commerce	69.25	4,625	28,628	10,078
602	Agriculture Commissioner	77.00	3,383	19,228	54,172
665	State Fair Association	27.00		64,990	10,537
670	Racing Commission	2.00	204		
701	State Historical Society	69.00	6,373	33,852	3,242
709	North Dakota Council on the Arts	5.00	25	4,155	584
720	Game and Fish Department	158.00	12,893	4,525	
750	Parks and Recreation Department	55.00	2,121	32,299	26,127
770	State Water Commission	90.00	5,913	19,711	9,428
801	Department of Transportation	1,079.50	79,396	701,897	49,631
	Total	8,021.20	$453,674	$4,417,719	$1,149,860

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Energy Development and Transmission Committee was created in 2007 and was made permanent in 2011. Under North Dakota Century Code Section 54-35-18, the committee must study the impact of a comprehensive energy policy for the state. The study may include reviewing and recommending policies related to extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.

In addition to its statutory study responsibilities, the committee was assigned the following two studies for the 2015-16 interim:

- Section 6 of 2015 House Bill No. 1176 provides for a study of oil and gas tax revenue allocation formulas. The study must include consideration of the allocations to political subdivisions.
- Senate Bill No. 2372 (2015) provides for a study of the impacts and costs of the federal Environmental Protection Agency (EPA) regulations of carbon dioxide emissions from new and existing electrical generation units. The study must include consideration of the cost of regulations on the industry and ratepayers as well as the status of technologies designed to reduce carbon dioxide emissions.

The committee is responsible for receiving various reports, as assigned by the Legislative Management, including:

- A biennial report from the Energy Policy Commission regarding recommendations for a comprehensive energy policy pursuant to Section 17-07-01.
- A biennial report from the North Dakota Transmission Authority regarding its activities pursuant to Section 17-05-13.
- A biennial report from the North Dakota Pipeline Authority regarding its activities pursuant to Section 54-17.7-13.
- A report, beginning December 2014 and every 4 consecutive years thereafter, on the amount of money in the carbon dioxide storage facility trust fund and on the amount of fees needed to satisfy the fund's objectives pursuant to Section 38-22-15. (The committee did not receive a report because the next report is scheduled to be received in December 2018.)
- A report from a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a tax credit pursuant to Section 57-60-02.1.
- A report, by December 1, 2015, from the Energy and Environmental Research Center regarding recommendations on the existing regulations for crude oil and produced water pipelines and recommendations on the feasibility and cost-effectiveness of requiring detection and monitoring technology on new and existing pipeline systems pursuant to Section 8 of 2015 House Bill No. 1358.
- A report each year of the 2015-16 interim regarding the status of retail electricity sales meeting or exceeding the state renewable and recycled energy objective pursuant to Section 5 of 2015 Senate Bill No. 2037.

Committee members were Senators Rich Wardner (Chairman), Kelly M. Armstrong, Brad Bekkedahl, Bill L. Bowman, Philip M. Murphy, and John M. Warner and Representatives Dick Anderson, Mike Brandenburg, Chuck Damschen, Ben Hanson, Corey Mock, and Todd Porter.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

OIL AND GAS TAX ALLOCATION FORMULAS STUDY

The Legislative Management assigned the committee the responsibility to study oil and gas tax revenue allocation formulas, including allocations to political subdivisions. The committee received information on the historical and current oil and gas tax rates and allocation formulas from state agencies. The committee also received information from political subdivisions regarding the use of oil and gas tax allocation funding, infrastructure projects, and challenges in government operations.

Information from State Agencies

Oil and Gas Tax Revenue

The committee received information from the Tax Department regarding oil and gas tax revenue collections for the 2013-15 biennium. The collections exceeded $6 billion, which was approximately $120 million more than the March 2015 revised revenue forecast. Oil prices ranged from a low of $35.99 per barrel to a high of $97.18 per barrel during the 2013-15 biennium. Oil and gas tax revenue collections decreased in the 2015-17 biennium compared to the 2013-15 biennium primarily due to lower oil prices and lower oil production.

Tax Allocations

The committee learned the State Treasurer's office allocates the oil and gas tax collections to political subdivisions and state funds pursuant to the allocation formulas. The oil extraction tax allocation formulas are based on percentage allocations to five funds including the common schools trust fund, the foundation aid stabilization fund, the resources trust fund, the legacy fund, and the general fund. Twenty percent of oil and gas gross production tax allocations are distributed to hub cities, hub city school districts, and selected state funds based on specified amounts and percentages. The remaining 80 percent of oil and gas gross production tax allocations are allocated to counties and the state based on percentages. The changes to the allocations to state funds became effective in August 2015, while the changes to the political subdivision allocation formulas became effective in September 2015.

Oil and Gas Employment

The committee received information from Job Service North Dakota regarding the process for compiling oil- and gas-related employment data related to hub cities. The agency identifies jobs by worksite to provide greater accuracy in determining the location of oil- and gas-related jobs. The agency monitors company operations and business models to determine if jobs are related to the oil and gas industry. Oil- and gas-related employment reached a peak in calendar year 2014 before decreasing in calendar year 2015. The decrease in employment was related to the decrease in oil and gas development activity due to low oil prices and was related to operational efficiencies in the oil industry. The committee learned North Dakota's unemployment rate has remained steady even though oil- and gas-related employment has decreased. The unemployment rate is based on North Dakota residents and does not include out-of-state workers.

Impact Grants

The committee learned the 2015 Legislative Assembly appropriated $139.3 million from the oil and gas impact grant fund for grants, including $132.5 million of designations for specific grant categories. The Department of Trust Lands awarded $42 million, but suspended future grants due to lower than anticipated oil tax revenues to the fund. An additional $6 million of grants is required to be awarded in January 2017. Future grant rounds will not be scheduled until the fund receives sufficient revenues to provide for the existing obligations. The Department of Trust Lands received guidance from the Attorney General's office that the department seek legislative guidance regarding the intent of any grant designations that are unable to be awarded during the 2015-17 biennium due to revenue collections being less than anticipated.

Oil and Gas Activity

The Department of Mineral Resources provided information to the committee regarding oil and gas activity in the state. The committee learned the decrease in oil prices led to a decrease in drilling and fracturing operations, which resulted in a decrease in oil production. Based on the department's analysis, the statewide average breakeven price for an oil well is $26 per barrel ranging from $16 per barrel in Dunn County to over $100 in Bottineau, Bowman, Renville, and Slope Counties. Drilling activity is concentrated primarily in Dunn County and McKenzie County because of lower breakeven prices. Since the oil and gas tax allocations are based on oil and gas tax revenue collections in each county, the allocations to counties located on the edges of the Williston Basin are anticipated to decrease as the oil production in those counties decreases.

Enhanced Oil Recovery

The committee traveled to the Energy and Environmental Research Center to receive information regarding energy-related research, including enhanced oil recovery research. Under current techniques, approximately 3 to 10 percent of the available oil can be recovered, but a small increase in the recovery percentage can result in billions of barrels of additional production. Enhanced oil recovery with water may not be effective in North Dakota because of the geology of the Williston Basin. Enhanced oil recovery using carbon dioxide is still in the process of being tested for the Williston Basin. The length of time before oil production starts, after injecting the carbon dioxide, is unknown, but could range from a few days to a few years. The committee learned the additional oil production from enhanced oil recovery could result in an increase in oil tax collections as well as an increase in economic activity.

Core and Sample Library

The committee also toured the Wilson M. Laird Core and Sample Library in Grand Forks and received information on the status of an expansion project. Oil companies use the library to conduct research prior to drilling wells.

Information from Political Subdivisions

The committee traveled to Williston, Watford City, and Stanley to receive information from entities in oil-producing counties as a part of the oil and gas tax allocation formula study. The entities included cities, school districts, counties, developmental disabilities providers, nursing homes, providers serving victims of domestic abuse and sexual violence, utility companies, law enforcement, and health care providers. The entities provided information on the following:

- Infrastructure projects, including the use of state funds for certain projects, the status of current projects, and future infrastructure needs.
- Challenges in operations, including safety concerns and employee recruitment and retention issues.
- Financial status, including current and projected debt levels, funding needs, and sources of revenue.

The committee learned state funding has helped political subdivisions address infrastructure challenges and has helped social service providers and health care providers with some of their challenges in operations. The committee also learned the decrease in oil and gas development activity has eased some of the infrastructure, operating, and financial challenges for entities located in oil-producing counties. However, some challenges, such as the need for behavioral health services, have remained constant or even increased despite the decrease in oil and gas development activity.

Committee Consideration

The committee discussed the current oil and gas tax allocation formulas as well as possible changes to the formulas. An issue for the 2017-19 biennium is balancing an adequate level of funding for political subdivisions to meet their needs with an adequate level of funding for necessary state programs. Another issue for the 2017-19 biennium is providing an adequate level of funding for the hub cities to continue servicing their debt payments. The possible changes to the oil and gas tax allocation formulas considered by the committee include:

- Adjust the amounts allocated to hub cities from the 1 percent of the 5 percent oil and gas gross production tax.
- Adjust the amounts allocated to hub city school districts from the 1 percent of the 5 percent oil and gas gross production tax.
- Maintain funding levels for school districts.
- Address concerns related to the allocations to the oil and gas impact grant fund and the designation of grants from the fund.
- Adjust the funding level for political subdivisions.
- Change the base year used for the allocations to political subdivisions from 2014 to 2016.
- Change the allocations to the strategic investment and improvements fund and the political subdivision allocation fund.
- Add an allocation to the budget stabilization fund.
- Simplify the allocation of the state's share to provide $300 million to the general fund, $300 million to the tax relief fund, up to $22 million to the state disaster relief fund, and all remaining revenue to the strategic investment and improvements fund.

Recommendation

The committee makes no recommendation regarding the study of oil and gas tax allocation formulas.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS STUDY

The Legislative Management assigned the committee the responsibility to study the impacts and costs of the EPA regulations of carbon dioxide emissions from new and existing electrical generation units.

Regulations and Compliance

The committee learned the EPA's Clean Power Plan establishes a federal-state process of regulations for limiting carbon dioxide emissions from power plants. The rules apply to new electrical generation facilities, which are regulated under Section 111(b) of the federal Clean Air Act, and apply to existing electrical generation facilities, which are regulated under Section 111(d) of the Clean Air Act. The rules in the proposed Clean Power Plan are intended to

reduce carbon dioxide emissions nationally by 32 percent by the year 2030. The final rules, published in October 2015, focus on the following three primary methods for reducing carbon dioxide emissions:

- Improving the average efficiency of coal-powered electrical generation units.
- Displacing coal-powered electrical generation systems with natural gas-powered electrical generation systems.
- Reducing the need for future fossil fuel-based electrical generation systems by increasing electrical generation from zero-carbon systems.

The committee received information from the Lignite Energy Council regarding options to comply with the Clean Power Plan. North Dakota is able to comply with the EPA regulations, but compliance has a cost. The Allam Cycle is a potential technology solution for compliance that allows coal to continue to be used for electrical generation. However, the Allam Cycle is still in the early stages of development, and the estimated cost to fully develop a commercially viable system using the Allam Cycle ranges from $300 million to $1 billion. Other options for compliance include:

- Replace 45 percent of the existing coal-powered generation with wind-powered generation;
- Capture carbon dioxide emissions from coal-powered generation for use in enhanced oil recovery;
- Develop cofiring facilities capable of using coal and either natural gas or biomass;
- Construct a nuclear power plant; or
- Purchase renewable energy credits, which are estimated to cost $200 million to $400 million per year.

The committee received information from the State Department of Health regarding the compliance requirements. States can achieve compliance using a rate-based calculation or a mass-based calculation. The rate-based calculation uses pounds of carbon dioxide per megawatt hour of electricity produced. The mass-based calculation uses total tons of carbon dioxide produced. The rate-based reductions increased from a reduction of 24.7 percent under the EPA's proposed rules to a reduction of 44.9 percent under the EPA's final rules, while the mass-based reductions increased from a reduction of 10.5 percent to a reduction of 37.4 percent. North Dakota had the second largest increase in the required reductions under the EPA's final regulations compared to all other states.

The committee learned states are required to submit final drafts of their compliance plans by September 2016 or states can file initial drafts of their compliance plans by September 2016 along with a request for an extension to file the final draft by September 2018. However, a motion to stay was granted during the litigation process, and as a result, states are not required to submit their compliance plans while the litigation is pending.

The committee received information from the Attorney General's office regarding legal action related to the EPA's Clean Power Plan. North Dakota submitted extensive comments on the proposed Clean Power Plan during the comment period. North Dakota filed a petition for review on October 23, 2015, related to the final rules for new power plants. Since North Dakota was the first to file, all other cases related to the final rules for new power plants will be consolidated with the North Dakota case. North Dakota also filed a petition to challenge the final rules related to existing power plants. North Dakota's case will be consolidated with West Virginia's case, because West Virginia was the first to file. North Dakota's primary legal arguments include:

- The EPA cannot regulate existing power plants under the new rules, because existing power plants are already regulated under a different set of existing rules.
- The EPA exceeded its authority in violation of state's rights under the Clean Air Act.
- The EPA did not provide an opportunity for comments on the changes in the final rules from the proposed rules.

Potential Impact of the Regulations

The committee learned the EPA anticipates the Clean Power Plan will result in climate benefits, health benefits, and economic benefits. The EPA estimates the net benefit of the Clean Power Plan includes $26 billion to $45 billion of climate- and health-related benefits. The EPA estimates the Clean Power Plan will result in 3,600 fewer premature deaths, 1,700 fewer heart attacks, and 90,000 fewer asthma attacks.

The committee received information from the Energy and Environmental Research Center regarding carbon management. Current carbon management projects include the Boundary Dam project in Estevan, Saskatchewan; the Bell Creek project in Bell Creek, Montana; and a lignite field test in northwestern North Dakota. The Boundary Dam project is a $1 billion project that will capture approximately 1 million tons of carbon dioxide per year, which can be used in enhanced oil recovery or which can be sequestered through underground injection. The Bell Creek project will inject 1 million tons of carbon dioxide per year into the Bell Creek oil field for enhanced oil recovery, and the project is

anticipated to produce approximately 40 million to 50 million barrels of incremental oil. The lignite field test successfully injected approximately 90 tons of carbon dioxide into an unminable lignite seam for long-term storage. Capturing carbon dioxide emissions from power plants in North Dakota could benefit the oil and gas industry by providing a source of carbon dioxide for enhanced oil recovery.

The committee learned the Congressional Budget Office estimated the cost of complying through renewable energy credits to be approximately $890 per household by the year 2020. A study conducted by the National Economic Research Associates estimated average annual electricity prices in North Dakota would increase by approximately 43 percent under the final rules of the Clean Power Plan. The committee received information from the Public Service Commission, which estimated North Dakota's compliance costs to be $375 million per year or approximately $50 per person per month.

The committee received information from industry representatives regarding the potential impact of the Clean Power Plan. Coal-powered electrical generation may not be an option in the future resulting in lost jobs, less economic activity, and less state revenue. The coal industry, including mining and power generation, provides approximately 16,000 jobs and contributes $3 billion of annual economic activity for North Dakota. The regulations may limit the ability of utility companies to supply additional electricity for future demand growth.

The committee received information from Job Service North Dakota regarding employment in the coal industry. Coal-related employment consistently provides some of the highest wages in the state. In the first quarter of calendar year 2015, coal mining jobs paid an average quarterly wage of approximately $25,000 compared to the state average of $12,775. Utility-related jobs, which are closely related to the coal industry, paid an average quarterly wage of approximately $21,000.

The committee received information from the Tax Department regarding the coal severance tax and the coal conversion facilities privilege tax. Revenue from the tax collections is distributed to political subdivisions and to state funds. The combined tax collections for both tax types have averaged approximately $35 million to $40 million per year since 1999.

Recommendation

The committee makes no recommendation regarding the study of EPA regulations of carbon dioxide emissions from new and existing electrical generation units.

COMPREHENSIVE ENERGY STUDY

The committee is responsible for studying comprehensive energy policy for the state. As part of this study, the committee received a report from the Energy Policy Commission, also known as the EmPower ND Commission.

Energy Policy Commission

In 2009 the Energy Policy Commission was created by Section 17-07-01 to develop a comprehensive energy policy and to monitor progress toward reaching the goals of the policy. The commission consists of the Commissioner of Commerce as Chairman and members appointed by the Governor to represent the agricultural community, Lignite Energy Council, North Dakota Petroleum Council, biodiesel industry, biomass industry, wind industry, ethanol industry, North Dakota Petroleum Marketers Association, North Dakota investor-owned electric utility industry, generation and transmission electric cooperative industry, lignite coal-producing industry, refining or gas-processing industry, and additional nonvoting members.

The committee received a report from the Energy Policy Commission regarding policy recommendations. The commission's recommendations relate to infrastructure, research and development, and the regulatory environment.

Infrastructure:

- Continue support for key infrastructure for energy and community development throughout the state.
- Provide funding and low-interest loan programs to ensure the completion of critical infrastructure projects.
- Expand existing water systems, including increased access to Lake Sakakawea for community and commercial needs.
- Monitor railroad infrastructure upgrades to ensure commodities can be delivered to markets.
- Continue support for the Department of Agriculture's ombudsman pipeline program.
- Clarify state permitting and jurisdictional authority to streamline the permitting process and avoid duplication with local political subdivisions.

Research and development:

- Continue support for existing research and development programs.
- Remove the expiration date related to the allocation of 5 percent of the general fund share of coal conversion tax revenue to the lignite research fund.
- Provide $10 million per biennium for fundamental research with oversight by the Lignite Research Council and the Oil and Gas Research Council.
- Provide $50 million per biennium for pilot and commercial demonstration projects.
- Create a strategy to develop hydrocarbon and biochemical industries in the state.
- Create an impact model to understand the integration of traditional and renewable electrical generation.

Regulatory environment:

- Encourage federal agencies to work with state agencies when developing regulations.
- Encourage state agencies to provide updates on energy-related issues.
- Establish opportunities for state and federal regulatory agencies to collaborate on federal rulemaking.
- Develop opportunities for value-added technologies.
- Provide adequate funding and staff for the Environmental Health Section of the State Department of Health.

Additional recommendations:

- Remove the expiration date related to a sales and use tax exemption for the materials used in the construction of a wind-powered electrical generation facility.
- Support incentives to encourage carbon dioxide capture and enhanced oil recovery.
- Provide funding for career and technical education programs to ensure a quality workforce.

CONSIDERATIONS

Oil Extraction Tax Credit for Enhanced Oil Recovery With Carbon Dioxide Bill Draft

The committee considered a bill draft relating to an oil extraction tax credit for enhanced oil recovery with carbon dioxide. The bill draft provides a $10 credit against oil extraction taxes for each ton of carbon dioxide purchased or acquired for use in enhanced oil recovery in the state. Oil producers would be required to report to the Industrial Commission regarding the amount of carbon dioxide initially injected into an oil reservoir. The committee made no recommendation regarding the bill draft because the Taxation Committee was assigned the responsibility to study enhanced oil recovery.

Wind Turbines Bill Draft

The committee considered a bill draft relating to a sales and use tax exemption for materials used in the construction of wind turbines. The bill draft removes the expiration dates for the sales tax exemption and the use tax exemption. The bill draft includes a retroactive application to provide continuity between the existing expiration date and the effective date of the proposed changes.

The committee received information from the Tax Department regarding the estimated fiscal impact of the bill draft. An official estimate for the fiscal impact of the bill draft cannot be determined because the number of wind turbines that may be installed is unknown. Based on a theoretical example from the Tax Department, if the sales and use tax exemption was made permanent and a 500 megawatt wind farm project were completed during the 2017-19 biennium, state sales tax collections would decrease by $20 million to $30 million.

The committee received information from the Department of Commerce regarding a cost-benefit analysis relating to a sales and use tax exemption for wind turbines. Information regarding the actual incentives received by companies is not available due to confidentiality restrictions. The estimated return to the state from the sales and use tax exemption was calculated using publicly available data and an economic model. Based on a sample scenario, the cost of the exemption is approximately $10.5 million with 50 percent of the cost returned to the state in 2 years and 7 percent per year returned to the state thereafter.

The committee received comments from the Department of Commerce, the Lignite Energy Council, and the electrical generation industry in support of the bill draft. The committee learned the construction of new wind turbines benefits landowners through easement payments, local political subdivisions through property tax revenues, and economic growth through job creation. The sales and use tax exemption will benefit customers with reduced rates, will keep North Dakota's tax environment competitive with Montana and South Dakota, and will provide tax fairness for all types of electrical generation facilities.

Coal Conversion Tax Revenue Allocations Bill Draft

The committee considered a bill draft relating to the allocation of coal conversion tax revenue. The bill draft removes an expiration date which will continue the 5 percent allocation of the general fund share of coal conversion tax revenue collections to the lignite research fund. The removal of the expiration date is estimated to decrease general fund revenues by $1 million in the second year of the 2017-19 biennium and by $2 million in each biennium thereafter.

The committee received comments from the Lignite Energy Council in support of the bill draft. The committee learned the bill draft allows the lignite industry to continue receiving grant funding for research to help the industry identify solutions to reduce carbon dioxide emissions.

Recommendations

The committee recommends House Bill No. 1028 relating to wind turbines which removes expiration dates to continue the sales and use tax exemptions for materials used in the construction of wind turbines.

The committee recommends Senate Bill No. 2031 relating to the allocation of coal conversion tax revenue which removes an expiration date and continues the 5 percent allocation of the general fund share of coal conversion tax revenue collections to the lignite research fund.

NORTH DAKOTA TRANSMISSION AUTHORITY REPORT

The committee received a report from the North Dakota Transmission Authority pursuant to Section 17-05-13. The transmission line from Fargo to Monticello, Minnesota was completed as part of the CapX2020 transmission line project while the remaining lines to connect various cities in Minnesota are expected to be complete in 2017. The CapX2020 project is part of a regional effort to enhance electrical reliability and to provide access to renewable energy within the Midwest. The report included a preliminary analysis of the impact of the EPA's Clean Power Plan and identified the loss of 14 gigawatts of coal electrical generation in the Midcontinent Independent System Operator region, which includes North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Wisconsin, Illinois, Indiana, Michigan, Montana, Missouri, Kentucky, Arkansas, Texas, Louisiana, and Mississippi. Installed electrical generation capacity in North Dakota totals 7,001 megawatts, consisting of 4,184 megawatts from coal, 1,876 megawatts from wind, 583 megawatts from water, and 358 megawatts from natural gas.

NORTH DAKOTA PIPELINE AUTHORITY REPORT

The committee received multiple updates from the North Dakota Pipeline Authority on oil and gas pipelines in the state. The committee learned oil exports by rail continue to decrease while exports by pipeline continue to increase. Approximately 50 percent of the oil exports from the Bakken Formation were by pipeline in August 2015, and approximately 60 percent of the oil exports were by pipeline in August 2016. Oil exports by rail are primarily destined for the east and west coasts because the pricing premiums in those regions result in higher profits for oil producers. However, the economic benefit of exporting oil by rail is decreasing because transportation costs are increasing and the pricing premiums in the coastal areas are decreasing.

The committee learned pipeline capacity is increasing as new pipelines are constructed. Natural gas pipeline capacity and gas processing plant capacity are anticipated to match the supply of natural gas from the Bakken Formation within a few years. Natural gas flaring is anticipated to decrease as the natural gas gathering and processing capacity increases. Oil pipelines being considered or under construction during the 2015-16 interim included the Dakota Access Pipeline project, the Sandpiper Pipeline project, and the Upland Pipeline project.

CARBON DIOXIDE CAPTURE TAX CREDIT REPORT

The committee was assigned the responsibility to receive a report from a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a tax credit. The information was submitted to the Legislative Council office pursuant to Section 57-60-02.1.

The only project in this state receiving a credit at this time is located at the Antelope Valley Station near Beulah. Basin Electric Power Cooperative owns the Antelope Valley Station that is part of an energy complex that includes the Great Plains Synfuels Plant and the Freedom Mine. Great Plains Synfuels is a commercial coal gasification facility that produces synthetic natural gas resulting in the production of carbon dioxide, which is transported to Canada for sequestration.

A facility that achieves a 20 percent capture of carbon dioxide emissions is entitled to a 20 percent reduction in the general fund share of the coal conversion tax. The facility may receive an additional reduction of 1 percent for each 2 percentage points of captured carbon dioxide emissions up to a maximum tax reduction of 50 percent reflecting an 80 percent capture of carbon dioxide emissions. The tax credit is limited to 10 years from the date the carbon dioxide emissions were first captured or from the date the coal conversion facility became eligible for the credit. The schedule below provides information on the tax credits received and the carbon dioxide captured since 2010, the year in which the tax reduction first became available.

Year	Tax Credits	Average Percentage of Carbon Dioxide Captured
2010	$2.2 million	40%
2011	$2.5 million	36%
2012	$2.9 million	42%
2013	$2.6 million	40%
2014	$3.0 million	41%
2015	$1.9 million	32%
Total	$15.1 million	

CRUDE OIL AND PRODUCED WATER PIPELINE STUDY REPORT

The committee received a report regarding recommendations on the existing regulations for crude oil and produced water pipelines and recommendations on the feasibility and cost-effectiveness of requiring detection and monitoring technology on new and existing pipeline systems pursuant to 2015 House Bill No. 1358.

Energy and Environmental Research Center Report

The committee learned the Industrial Commission contracted with the Energy and Environmental Research Center to compile the information. The committee learned the study has two phases, including a research report to evaluate regulations and pipeline leak detection and monitoring technology as well as a demonstration project to test pipeline technology. According to the report, North Dakota had approximately 12,700 miles of gathering pipelines as of August 2011 and is anticipated to have approximately 36,000 miles of gathering pipelines by the year 2020. The committee learned oil spill volumes relative to total oil production decreased in North Dakota between 2008 and 2014. The report identified that North Dakota had a lower oil spill volume relative to total oil production in 2014 than New Mexico and Texas.

Contained oil and produced water spills are reported to the Department of Mineral Resources while uncontained spills are reported to the State Department of Health. Since the spills are reported in two separate databases, spill data may be missing or repeated. Industry personnel report the potential cause of a spill, but due to inconsistencies in the reports, categorizing and analyzing the potential causes of spills may not be possible in the current reporting systems.

The precise location of many miles of existing gathering pipelines is unknown because the locations were installed prior to the development of the geographic information system. The location of the existing gathering pipelines can be identified using various types of technology, including magnetometers and ground penetrating radar. Some companies have data on the location of existing gathering pipelines, but most records of older gathering pipeline locations have been lost during mergers and acquisitions or the records do not exist. The committee learned the study did not include an analysis of any potential incentives to encourage companies to locate and identify existing gathering pipelines.

The recommendations in the report relate to infrastructure, leak and spill analysis, materials, construction, maintenance and inspection, monitoring and leak detection, and abandonment. The recommendations include:

- Develop real-time data sharing between pipeline partners.
- Apply new regulations based on successes in other pipeline sectors with adjustments for the specific operating conditions in North Dakota.
- Develop a streamlined method for spill reporting and analysis that can be accessed by multiple state agencies.
- Analyze spill data to determine the root causes of pipeline leaks.
- Evaluate the impact of minimum reporting thresholds for spills.
- Require installation crews to have proper training and independent inspections of pipeline installations.
- Monitor the development of new pipeline products.
- Require a notice of intent prior to the installation of gathering pipelines.
- Consider requiring special pipeline installation methods for environmentally sensitive areas.

- Incorporate some of the construction standards from transmission pipelines into the regulations for gathering pipelines.
- Consider implementing regulations related to hydrostatic testing and the maintenance of pipelines.
- Research low-cost external leak detection technologies.
- Demonstrate the use of unmanned aerial systems for pipeline monitoring.
- Catalog the locations of existing pipelines.

Other Pipeline Information

The committee received information from the Public Service Commission regarding an overview of the pipeline siting process. Title 49 relates to the energy conversion and transmission facility siting process. The 2013 and 2015 Legislative Assemblies streamlined the siting process by allowing companies to install similar infrastructure within a corridor that has already been permitted and by allowing companies to adjust the route within the permitted corridor after providing certification to the commission.

The committee received information from the Department of Agriculture regarding the department's pipeline restoration and reclamation oversight program established in 2015 Senate Bill No. 2271. The Department of Agriculture helps to mediate conflicts between landowners or surface tenants and pipeline companies under the program. The department does not provide legal counsel; however, the program includes landowner education which encourages landowners to evaluate the use of the land, to be aware of the pipeline installation method, and to review the remediation process.

The Department of Mineral Resources provided information to the committee regarding the department's underground gathering pipeline program. The committee learned 2015 House Bill Nos. 1333 and 1358 provided the framework for the program. The department received authorization for 10 full-time equivalent positions to implement the program, and developed proposed administrative rules for underground gathering pipelines. The proposed rules relate to bonding requirements, installation oversight, inspections, reclamation, leak detection and monitoring, and spill response plans. At the time of this report, the proposed rules were still under review by the Administrative Rules Committee.

RETAIL ELECTRICITY SALES REPORT

Pursuant to the committee's assigned responsibilities, the committee received annual reports from the Public Service Commission regarding retail electricity sales meeting or exceeding the state renewable and recycled energy objective. In 2008, 4 percent of retail electricity sales in North Dakota were from renewable energy. The percentage of retail electricity sales from renewable energy increased to approximately 16 percent in 2014 followed by a slight decrease to 15.5 percent in 2015. The state's goal for retail electricity sales from renewable energy is 10 percent. The majority of the renewable energy reflects electrical generation from wind energy. Approximately 40 percent of the megawatt hours of electricity produced from renewable energy is utilized in North Dakota while approximately 60 percent is exported to other states.

WATER MANAGEMENT REPORT

The committee also received a report from the Energy and Environmental Research Center regarding water management in the oil and gas industry. Approximately 150,000 barrels of water are used in the fracturing process for each well. Oil producers also use water in the production phase as part of the well maintenance process with active wells using an average of 30 to 50 barrels of water per day for maintenance. As much as 584 million barrels of water per year may be needed by 2035 for well maintenance according to the report. In comparison, the average daily flow rate of the Missouri River provides enough water to fracture 4,000 oil wells, and the average daily evaporation rate provides enough water to fracture 200 oil wells.

Approximately 94 percent of produced water from oil wells is injected in the Dakota Formation through disposal wells, and the estimated annual volume of produced water is anticipated to increase to 811 million barrels by 2025 and to 1.04 billion barrels by 2035. The number of disposal wells increased from 297 in 2008 to 494 in 2015. The Energy and Environmental Research Center estimates 1,000 disposal wells may be needed by 2025 while 1,500 disposal wells may be needed by 2035.

The Energy and Environmental Research Center is in the process of modeling the Dakota Formation to determine the formation's capacity to handle produced water. The center is also researching the use of other formations for produced water disposal. Concerns about injecting produced water into the Dakota Formation include reservoir pressure, the need to drill through the Dakota Formation to reach the Bakken Formation, and salt build up that hinders the injection of additional produced water.

Based on research in other states, the report indicated the primary reason produced water recycling is not actively utilized in North Dakota is because of the additional costs to implement the process. Produced water recycling is more common in southern states because the fresh water supply is more limited. One oil producer in North Dakota used recycled produced water in the fracturing process. The well's performance was comparable to wells that were fractured using fresh water but the use of recycled water resulted in an additional $250,000 of costs for the oil producer.

OTHER

Technologically Enhanced Naturally Occurring Radioactive Material Disposal

The committee received information from the State Department of Health regarding the disposal of technologically enhanced naturally occurring radioactive material (TENORM). The department commissioned Argonne National Laboratories to conduct a study to determine a scientifically based safe disposal limit for TENORM. The study recommended a disposal limit of 50 picocuries per gram of TENORM for 25,000 tons per year in a special waste landfill. Technologically enhanced naturally occurring radioactive material monitoring across the state is limited because the State Department of Health does not have the resources to conduct detailed monitoring and continuous tracking of oilfield waste containing TENORM. The department imposes penalties for the illegal dumping of waste containing TENORM. The department developed administrative rules related to the proper disposal of TENORM, including permitting of special waste landfills, tracking and reporting waste, and disposal limits.

Soil Reclamation Projects

The committee learned the Department of Mineral Resources spent approximately $310,000 from the abandoned oil and gas well plugging and site reclamation fund on projects at three test sites to study options for reclaiming soils surrounding legacy brine pits pursuant to 2015 House Bill No. 1358. The committee learned the Energy and Environmental Research Center also conducted work on legacy brine pits during the 2015-16 interim. The original goal of the Energy and Environmental Research Center's project was to identify best practices for remediating legacy brine pits. However, the focus of the project changed when the size and characteristics of the impacted area at the project site could not be accurately identified from existing estimates. The research team drilled test wells, conducted soil samples, and mapped the project site to more accurately determine the size and characteristics of the impacted area at the project site. Accurate size and characteristic data are important for determining the best methods of remediation and for estimating the cost of the remediation.

GOVERNMENT FINANCE COMMITTEE

The Government Finance Committee was assigned the following responsibilities:

- A study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding. The study was to determine whether there are viable options to meet the needs of our state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs is refused, and whether the benefit of accepting certain federal funds outweighs the benefit of participation in the federal programs.
- A study of the functions of the Budget Section. The study was to review the 85 duties and studies assigned to the Budget Section, including the need to continue the duties and the ability of the Budget Section to authorize financial decisions, including full-time equivalent (FTE) positions, North Dakota University System building projects, and project scope changes.
- Review state budget information, including monitoring the status of revenues and appropriations.
- Receive the annual report from the Committee on Employment of People with Disabilities detailing the committee's activities, goals, and progress in reaching these goals, and strategies and policies that can help the committee to realize its goals pursuant to North Dakota Century Code Section 50-06.1-16.
- Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority pursuant to Section 54-40-01.
- Receive a report by the Office of Management and Budget (OMB) by October 15 of each even-numbered year, regarding the reports received by OMB from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, and a plan to operate the state agency when federal funds are reduced by 5 percent or more of the total federal funds the state agency receives pursuant to Section 1 of 2015 House Bill No. 1085.
- Receive a report from OMB regarding its statewide plan and any appropriation authority transferred from the targeted market equity pool pursuant to Section 4 of 2015 Senate Bill No. 2015
- Receive a report from OMB regarding distributions from the energy development impact funding pool and each agency receiving a distribution from the energy impact funding pool regarding its plan to discontinue energy impact adjustments for employees at the end of the biennium beginning July 1, 2015, and ending June 30, 2017, pursuant to Section 5 of 2015 Senate Bill No. 2015.

Committee members were Representatives Jeff Delzer (Chairman), Rick C. Becker, Joshua A Boschee, Glen Froseth, Eliot Glassheim, Jessica Haak, Craig Headland, Jim Kasper, Kim Koppelman, Vernon Laning, Mike Lefor, Scott Louser, Chet Pollert, Jim Schmidt, Vicky Steiner, Don Vigesaa, and Kris Wallman and Senators Ron Carlisle, Ralph Kilzer, Richard Marcellais, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

STUDY OF STATUTORY AND REGULATORY REQUIREMENTS RELATING TO FEDERAL FUNDING

The Government Finance Committee was assigned a study of statutory and regulatory requirements relating to federal funding pursuant to Section 1 of 2015 House Bill No. 1083. The study was to determine whether there are viable options to meet the needs of our state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs is refused, and whether the benefit of accepting certain federal funds outweighs the benefit of participation in the federal programs.

Background Information

The committee learned that, beginning with the 1987-88 interim, the Legislative Council has presented each interim a memorandum identifying the federal funds appropriated and the estimated federal funds to be received each biennium by agency. The committee learned the memorandum identifies the agency name, program name, federal funds appropriated, estimated federal funds to be received, variance, appropriated general fund matching funds, appropriated other funds matching funds, required general fund maintenance of effort, required other funds maintenance of effort, and estimated amount of indirect costs reimbursed.

The committee learned state agencies with significant federal funds appropriations during the 2013-15 biennium, and those anticipating to receive significant federal funds during the 2015-17 biennium include:

Agency	Original 2013-15 Federal Funds Appropriation	Estimated 2015-17 Federal Funds to be Received
Department of Public Instruction	$269,049,193	$271,473,096
State Department of Health	120,309,143	116,763,623
Department of Human Services	1,700,732,059	2,030,831,027
Job Service North Dakota	77,206,472	55,342,571
North Dakota Housing Finance Agency	26,177,975	25,227,780
Adjutant General	231,625,343	147,452,483
Department of Commerce	64,138,514	49,196,968
Upper Great Plains Transportation Institute	19,007,683	11,700,195
Game and Fish Department	29,723,601	30,886,724
State Water Commission	37,080,441	11,375,000
Department of Transportation	691,500,000	617,500,000
Other state agencies	93,411,985	77,793,432
Total	$3,359,962,409	$3,445,542,899

State Auditor

The committee learned the State Auditor performs a "single audit" to review agency spending of federal funds on a biennial basis. The committee learned over 70 percent of the federal funds spent by state agencies in fiscal year 2014 were spent by three agencies, the Department of Human Services (DHS), the Department of Transportation (DOT), and the Department of Public Instruction (DPI). The committee learned auditors are required to obtain an understanding of the internal control over compliance for each major federal program and test the effectiveness of those controls.

Department of Corrections and Rehabilitation

The committee learned the Department of Corrections and Rehabilitation (DOCR) administers four major federal grant programs--programs for crime victim's assistance, crime victim's compensation, state criminal alien assistance, and juvenile justice and delinquency prevention. The Department of Corrections and Rehabilitation also receives federal funds through grants administered by DPI and the Department of Career and Technical Education. The Department of Corrections and Rehabilitation received approximately $5.7 million in federal funding in fiscal year 2015 from the grant programs it administers.

The committee learned DOCR is required to comply with the national Prison Rape Elimination Act standards. The committee learned noncompliance with the Prison Rape Elimination Act would subject the state to the loss of 5 percent of federal Department of Justice grant funds, prevent DOCR from continuing its housing contract with the Bureau of Prisons, and could potentially lead to litigation by the Department of Justice. In fiscal year 2014, North Dakota state agencies, including the State Department of Health, Attorney General, DOCR, Information Technology Department (ITD), North Dakota State University (NDSU), University of North Dakota (UND), and Minot State University received $7.3 million in federal funds from the Department of Justice. The committee learned the ability to contract with the Bureau of Prisons is important to DOCR in order to manage more dangerous inmates. To remain Prison Rape Elimination Act compliant, it is estimated 14 to 16 additional FTE positions will be needed at the North Dakota Youth Correctional Center during the 2017-19 biennium.

Department of Public Instruction

The committee learned DPI anticipated receiving over $129 million in federal funds for various grant programs for the 2015-16 fiscal year, of which approximately $121 million is provided to individual school districts. The Department of Public Instruction receives grants from the United States Department of Agriculture (USDA), the Department of Education, the Centers for Disease Control and Prevention, and the Department of Health and Human Services. The committee learned federal programs administered by DPI include:

1. Title I - Provide financial assistance to state and local educational agencies to meet the needs of at-risk children identified as failing or most at risk of failing the state's performance standards.
2. School Improvement Grants Program - Raises the achievement of students in the lowest-performing schools.
3. Title I Part C - Ensure migrant students reach academic standards and graduate prepared for responsible citizenship, further learning, and productive employment.
4. Title I Part D - Improve educational services for children and youth in local and state institutions for neglected or delinquent children.
5. Title II Part A - Increase student academic achievement by improving teacher and principal quality.
6. Title II Part B - Improve the academic achievement of students in mathematics and science.

7. Title II State Discretionary Funds - Support improvement in the recruitment, hiring, training, and retention of teachers.
8. McKinney-Vento Homeless Assistance Act - Provide homeless student services to address the problems that homeless children and youth face in enrolling, attending, and succeeding in school.
9. 21st Century Community Learning Centers - Develop or expand on out-of-school programs.
10. North Dakota Refugee School Impact Grant Program - Engage in activities or provide services to benefit school districts in North Dakota with significant numbers of newly arrived refugee children and youth.
11. Title III Part A - Ensure that English learners, including immigrant children and youth, attain English proficiency and develop high levels of academic achievement in English.
12. Title VI Part A - Pay the costs of development of state assessments and standards required by the Elementary and Secondary Education Act.
13. Special Education Part B - Ensure children with disabilities have access to free public education to meet their needs and prepare them for further education, employment, and independent living.
14. North Dakota Dual Sensory Project - Promote academic achievement and improve results for children with disabilities.
15. State Personnel Development Grant Program - Reform and improve systems for personnel preparation and professional development in order to improve results for children with disabilities.
16. Adult Education - Help adults over the age of 16 obtain basic academic and educational skills.
17. Safe Schools-Healthy Students Initiative - Coordinate the Youth Risk Behavior Survey, designed to monitor health risk behavior trends and used to plan, evaluate, and improve school and community programs.
18. School Nutrition Programs - The National School Lunch Program, the School Breakfast Program, and the After School Snack Program help fight hunger and obesity.
19. United States Department of Agriculture Foods for Schools Program - Support American agricultural producers by providing USDA-purchased food to schools and other institutions participating in the National School Lunch Program.
20. Child and Adult Care Food Program - Provide aid to child and adult care institutions and family or group day care homes to provide food for children, older adults, and disabled persons.
21. Summer Food Service Program - Reimburse providers of meals to children and teens in low-income areas at no charge during the summer months.
22. Fresh Fruit and Vegetable Program - Improve children's diet and create healthier eating habits.
23. Team Nutrition - Provide training and technical assistance for food service, provide nutrition education for children and caregivers, and support healthy eating and physical activity.
24. The Emergency Food Assistance Program - Supplement the diets of low-income Americans by providing them with emergency food and nutrition assistance at no cost.
25. Food Distribution Program on Indian Reservations - Provides foods to low-income households living on Indian reservations and Native American families residing in designated areas near reservations.
26. Commodity Supplemental Food Program - Improve the health of low-income elderly persons at least 60 years of age by supplementing their diets.
27. Special Milk Program - Provide milk to children in schools and child care institutions who do not participate in other federal meal service programs.

The committee learned certain federal programs administered by DPI do not require a local funding match and certain programs also provide support for the department's administrative costs. Requirements associated with federal programs may include various reporting and assurances of compliance with program requirements. The committee learned the federal Every Student Succeeds Act eliminates over 50 federal programs and replaces them with a single block grant, which may result in decreased administrative costs. The committee learned DPI has made efforts to reduce costs, including office consolidation, employee position eliminations, reduced travel, increased use of technology, and hiring a consultant to complete a business office model project.

Report on Federal Funds

Section 54-27-27.1 provides each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, shall report to OMB a plan to operate the state agency if federal funds are reduced by 5 percent or more of the total federal funds the state agency receives. The report must include information on whether the agency will request state funds to offset the decrease in federal funds. The report is not required to address a reduction in federal funds received by the agency which is a result of:

1. A decrease in caseloads or cost per case;
2. A change in the anticipated project completion date for a construction project qualifying for federal fund reimbursement; or
3. The completion of a one-time project funded in whole or in part by federal funds.

The Office of Management and Budget is required to report to the Legislative Management by October 15 of each even-numbered year on the reports received from state agencies under this section. The report must include a summary of the reports received from state agencies on how each agency will operate with the reduction in federal funds. The Government Finance Committee was assigned responsibility for receiving this report for the 2015-16 interim.

The committee received the report from OMB regarding state agency plans to operate if federal funds are reduced by 5 percent or more of the total federal funds the agency receives. The committee learned the Secretary of State and the Public Service Commission (PSC) are expecting a decrease in federal funding of 5 percent or more. The Secretary of State reported federal funds have been used to establish a statewide voting system, federal funds will be adequate to sustain the system through the 2017-19 biennium, and the agency plans to eventually request approximately $9 million of state funding for the replacement of the voting system. The Public Service Commission anticipates federal funding to decrease 10 percent for the abandoned mine lands program and the PSC plans to reduce the size and cost of projects to match the reduction in federal funding. Other agencies surveyed did not expect federal funding to decrease by 5 percent or more, but responded with actions anticipated to be taken if federal funding did decrease. Most agencies indicated the programs associated with the decreased federal funding would be reduced to match the federal funding available. Certain agencies, including the Tax Commissioner, DPI, Protection and Advocacy Project, and the Industrial Commission, indicated requests for general fund appropriations may be submitted to replace the federal funds, if reduced.

Recommendation

The committee recommends House Bill No. 1029 to require state agencies to perform an analysis prior to applying for or accepting federal funds. The bill also provides for the Legislative Management to continue, in the 2017-18 interim, the study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funds.

STUDY OF THE FUNCTIONS OF THE BUDGET SECTION

The Government Finance Committee was assigned a study of the functions of the Budget Section pursuant to Section 40 of 2015 Senate Bill No. 2015. The study was to review the 84 duties assigned to the Budget Section, including the need to continue the duties and the ability of the Budget Section to authorize financial decisions, including FTE positions, University System building projects, and project scope changes.

Budget Section Duties

Central Dakota Water Supply Project

The Chairman of the Legislative Management directed the Government Finance Committee, as part of its study of Budget Section functions, 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 be authorized by the Legislative Assembly to approve, in future bienniums, alternative uses of funds appropriated by the Legislative Assembly. The committee learned Section 19 of Senate Bill No. 2020 provided a contingent allocation of $10 million for a grant for a water reuse facility, $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 be constructed in Stutsman County.

The committee learned in August 2015, CHS Inc. announced it was no longer planning to build a fertilizer or chemical processing facility in Stutsman County. Therefore, it appeared the contingency would 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 led to questions regarding the authority of the Budget Section to approve alternative uses of the appropriated funds.

Acceptance of buildings and campus improvements

The committee reviewed provisions of Section 15-10-12.1. The 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. Under this section, the committee learned during the 2007-08 interim, the Budget Section approved requests from UND and 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.

Other Budget Section Duties

The committee learned certain Budget Section duties require reports to be presented to the Budget Section, while other Budget Section duties require reports to be filed with the Budget Section. Budget Section reporting requirements further reviewed by the committee include:

- Section 4-05.1-19(10) requires a report from the State Board of Agricultural Research and Education be presented to the Budget Section.
- Section 54-59-19 requires a report from ITD be presented to the Budget Section and the interim Information Technology Committee.
- Section 57-38-01.29 requires the Tax Commissioner to report any adjustment to the homestead income tax credit rate to the Budget Section. The committee learned the homestead income tax credit was valid only for taxable years 2007 and 2008.
- Section 57-38-01.30 requires the Tax Commissioner to report any adjustment to the commercial property income tax credit cap to the Budget Section. The committee learned the commercial property income tax credit was valid only for taxable years 2007 and 2008.

Other Budget Section approval requirements further reviewed by the committee include:

- Section 54-06-37 requires approval of the Legislative Assembly or the Budget Section for state agencies to purchase or lease aircraft.
- 54-23.3-09 requires the approval of the Legislative Assembly or the Budget Section for new DOCR programs estimated to cost more than $100,000.
- Section 54-56-03 requires the approval of the Legislative Assembly or the Budget Section for the Children's Services Coordinating Committee to distribute grant funds to children's services organizations and programs. The committee learned the Children's Services Coordinating Committee has not received an appropriation since the 2003-05 biennium and has not met in several years.
- Section 54-16-04.3 authorizes the Budget Section to approve new FTE positions.
- Section 54-16-04.1 authorizes the Budget Section to approve the acceptance and expenditures of federal funds which were not appropriated.

The committee discussed the potential to remove the authority of the Budget Section to approve new FTE positions, the potential to incentivize agencies to accurately report applications for federal grants to OMB, and the potential to increase the involvement of the legislative branch in reviewing and approving revenue forecasts during the interim.

The committee considered the appropriateness of the Budget Section receiving certain reports, the necessity of continuing duties to approve agency requests that are no longer applicable or have never been submitted to the Budget Section, and the appropriate dollar amount of requests requiring Budget Section approval.

Recommendations

The committee recommended 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.

The committee also recommends House Bill No. 1030 to amend Section 15-10-12.1, relating to higher education campus improvements and building construction. The bill increases the minimum amount for which campuses must seek project approval from the Legislative Assembly or Budget Section from $385,000 to $700,000. The bill also removes the authority of the Budget Section to approve the use of land under the control of the State Board of Higher Education for construction of new buildings or building expansion projects. These projects would need Legislative Assembly approval.

The committee also recommends Senate Bill No. 2032 to amend Sections 4-05.1-19(10), 57-38-30.3(7), and 54-59-19 to require the State Board of Agricultural Research and Education to file a report rather than present a report to the Budget Section, to remove references to the homestead and commercial property income tax credits, and to remove the requirement for ITD to present a report to the Budget Section. The bill repeals Section 54-23.3-09, Chapter 54-56, and Sections 57-38-01.29 and 57-38-01.30, relating to reporting of new DOCR programs, the Children's Services Coordinating Committee, the homestead income tax credit, and the commercial property income tax credit. The homestead property tax credit is not affected by this bill.

The committee also recommends House Bill No. 1031 to amend Section 54-06-37, removing the authority of the Budget Section to authorize the purchase or lease of an aircraft by a state agency or other entity of state government.

STATE BUDGET INFORMATION

The Chairman of the Legislative Management assigned the committee various budget-related duties, including monitoring state revenues and expenses, receiving updated general fund revenue forecasts, reviewing the status of major state funds, and receiving information regarding state agency budgets and cost-to-continue items.

Status of the General Fund and Selected Special Funds

The committee received updates regarding the status of the general fund and selected special funds. The following is a summary of original and revised 2015-17 biennium general fund and selected special fund ending balance estimates:

Fund	Actual Balance - June 30, 2015	Estimated Balance - June 30, 2017 (Original Legislative Forecast)	Estimated Balance - June 30, 2017 (July 2016 Revised Forecast)
General fund	$729,529,389	$211,009,592	$0
Budget stabilization fund	$572,485,454	$583,545,799	$0
Legacy fund	$3,325,913,159	$4,325,859,817	$4,266,593,159
Foundation aid stabilization fund	$617,625,443	$746,124,942	$625,020,444
Strategic investment and improvements fund (undesignated)	$191,029,935	$401,538,777	$328,083,739

2017-19 Preliminary Ongoing General Fund Revenue Forecast

The committee received information regarding the revised ongoing general fund revenue forecast for the 2015-17 biennium and the preliminary 2017-19 biennium ongoing general fund revenue forecast. The following schedule compares the forecasts:

Ongoing General Fund Revenue Forecasts					
	2015-17 Biennium			2017-19 Biennium	
Tax Type	2015-17 Biennium Legislative Estimates	July 2016 Revised 2015-17 Biennium Forecast	Change	2017-19 Biennium Preliminary Forecast	Change From 2015-17 Biennium Revised Forecast
Sales and use	$2,868,026,560	$1,863,517,574	($1,004,508,986)	$2,049,472,000	$185,954,426
Motor vehicle excise	314,324,000	201,543,785	(112,780,215)	204,572,000	3,028,215
Individual income	763,276,000	690,525,749	(72,750,251)	733,937,000	43,411,251
Corporate income	371,422,000	158,713,800	(212,708,200)	124,552,000	(34,161,800)
Insurance premium	91,830,364	104,935,597	13,105,233	105,000,000	64,403
Financial institutions	0	324,145	324,145	0	(324,145)
Oil and gas production	155,570,000	102,881,583	(52,688,417)	102,881,583	0
Oil and gas extraction	144,430,000	197,118,417	52,688,417	197,118,417	0
Gaming	7,106,250	6,975,584	(130,666)	7,000,000	24,416
Cigarette and tobacco	61,334,000	57,082,715	(4,251,285)	54,086,000	(2,996,715)
Wholesale liquor	18,995,000	18,114,988	(880,012)	18,578,000	463,012
Coal conversion	39,578,000	42,725,976	3,147,976	39,709,000	(3,016,976)
Mineral leasing fees	19,667,704	23,635,424	3,967,720	20,000,000	(3,635,424)
Departmental collections	73,883,318	78,448,832	4,565,514	80,000,000	1,551,168
Interest	20,999,500	23,889,121	2,889,621	8,700,000	(15,189,121)
Total	$4,950,442,696	$3,570,433,290	($1,380,009,406)	$3,745,606,000	$175,172,710

Oil and Gas Tax Allocations

The committee reviewed the estimated allocations of oil and gas production and oil extraction taxes for the 2015-17 biennium and the preliminary estimate for the 2017-19 biennium.

Estimated Allocations of Oil and Gas Production and Oil Extraction Taxes					
	2015-17 Biennium Legislative Estimates	July 2016 Revised 2015-17 Biennium Forecast	Change	2017-19 Biennium Preliminary Forecast	Change From 2015-17 Biennium Revised Forecast
Legacy fund	$950,600,000	$810,680,000	($139,920,000)	$936,200,000	$125,520,000
Tribal share	265,080,000	201,090,000	(63,990,000)	250,760,000	49,670,000
Oil and gas research fund	10,000,000	10,000,000	0	10,000,000	0
Oil and gas impact grant fund	140,000,000	74,300,000	(65,700,000)	100,000,000	25,700,000
Political subdivisions	630,790,000	541,690,000	(89,100,000)	554,160,000	12,470,000
Abandoned well reclamation fund	10,000,000	10,130,000	130,000	12,030,000	1,900,000
North Dakota outdoor heritage fund	27,500,000	19,620,000	(7,880,000)	24,050,000	4,430,000
Foundation aid stabilization fund	134,230,000	123,450,000	(10,780,000)	150,030,000	26,580,000
Common schools trust fund	134,230,000	123,450,000	(10,780,000)	150,030,000	26,580,000
Resources trust fund	237,410,000	218,010,000	(19,400,000)	265,860,000	47,850,000
Energy conservation grant fund	1,200,000	1,200,000	0	1,200,000	0
Renewable energy development fund	3,000,000	3,000,000	0	3,000,000	0
Infrastructure revolving loan fund	26,850,000	24,690,000	(2,160,000)	30,010,000	5,320,000
General fund	300,000,000	300,000,000	0	300,000,000	0
Tax relief fund	300,000,000	300,000,000	0	300,000,000	0
Strategic investment and improvements fund	202,490,000	119,180,000	(83,310,000)	395,770,000	276,590,000
State disaster relief fund	16,420,000	14,640,000	(1,780,000)	22,000,000	7,360,000
Political subdivision allocation fund	43,930,000	8,210,000	(35,720,000)	0	(8,210,000)
Total	$3,433,730,000	$2,903,340,000	($530,390,000)	$3,505,100,000	$601,760,000

Oil and Gas Information

The committee received information regarding oil and gas development in the state. The committee learned there are 13,255 active producing wells in the state. In September 2016 there were 37 drilling rigs operating in North Dakota. In August 2016 oil production in North Dakota fell below 1 million barrels per day for the first time since 2014. The committee learned the Department of Mineral Resources estimates the West Texas Intermediate price for oil will need to exceed $40 for at least 90 days before companies begin returning inactive wells to production, $50 for at least 90 days before companies begin completing wells waiting on completion, and $60 for at least 90 days before companies begin drilling permitted wells. The committee learned the breakeven West Texas Intermediate price for oil ranges from $16 in Dunn County to over $100 in Bottineau, Bowman, Renville, and Slope Counties. The committee learned average North Dakota oil well drilling costs have been reduced by 28 percent and operating costs have been reduced by 29 percent.

Report on Transfers from the Targeted Market Equity Pool

Section 4 of 2015 Senate Bill No. 2015 provides an appropriation of $3.75 million from the general fund and $740,000 from special funds derived from federal funds and other income, to OMB for a state agency targeted market equity salary funding pool to provide compensation adjustments for state employees. The market equity increases were to be prioritized based on a statewide plan prepared by OMB within the funding available in the pool. The plan must address occupational market disparities, economic growth areas, recruitment and retention challenges, and external pay inequities for employees who are critical to the mission of the agency. The plan must give priority to employees whose salary is in the first or second quartile of their assigned salary range and employees whose salary is below the average classified state employee salary level.

The Office of Management and Budget was to transfer appropriation authority from the targeted market equity salary pool to eligible agencies for approved market equity salary adjustments and provide a report to the Legislative Management regarding the statewide plan and any appropriation authority transferred from the pool. The Government Finance Committee was assigned this responsibility for the 2015-16 interim.

The committee learned OMB made the following transfers from the targeted market equity fund:

Agency	General Fund Transfer	Other Funds Transfer	Total Appropriations
State Department of Health	$724,558		$724,558
Veterans' Home		$468,954	468,954
Department of Human Services	2,768,570	271,046	3,039,616
Protection and Advocacy Project	185,549		185,549
Adjutant General	71,323		71,323
Total	$3,750,000	$740,000	$4,490,000

Report on Distributions from the Energy Development Impact Funding Pool

Section 5 of 2015 Senate Bill No. 2015 provides an appropriation of $2,400,000 from the general fund and $5,565,000 from special funds derived from federal funds and other income, to OMB for a state agency energy development impact funding pool. State agencies could submit an application to OMB for a transfer of appropriation authority from the state agency energy development impact funding pool for employee housing rental assistance and temporary salary increases for employees affected by energy development. The Office of Management and Budget, subject to Emergency Commission approval, was to transfer appropriation authority from the state agency energy development impact funding pool to eligible agencies for approved applications.

The Office of Management and Budget was to provide a report to the Legislative Management regarding distributions from the energy development impact funding pool. In addition each agency receiving a distribution from the energy impact funding pool was to report to the Legislative Management regarding its plan to discontinue energy impact adjustments for employees at the end of the 2015-17 biennium. The Government Finance Committee was assigned this responsibility for the 2015-16 interim.

The committee learned OMB made the following distributions for the first year of the 2015-17 biennium from the energy development impact funding pool:

Agency	General Fund	Other Funds	Total
Tax Department	$20,000		$20,000
Department of Human Services	821,754	$167,899	989,653
Highway Patrol	207,500		207,500
Department of Corrections and Rehabilitation	168,612		168,612
State Historical Society	15,000		15,000
Game and Fish Department		25,000	25,000
Department of Transportation		2,433,072	2,433,072
Total	$1,232,866	$2,625,971	$3,858,837

The committee learned the Emergency Commission did not approve any agency requests for distributions from the energy development impact funding pool for the second year of the 2015-17 biennium. Agencies receiving distributions from the energy impact funding pool during the first year of the 2015-17 biennium were not asked to provide reports regarding plans to discontinue energy impact adjustments, as the distributions were already discontinued.

REPORT FROM THE COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

Section 50-06.1-16 establishes the Committee on Employment of People with Disabilities and requires the committee to submit an annual report to the Legislative Management before January 1 of each year. The report must detail the committee's activities, the committee's goals, and the progress the committee has made in reaching these goals. The report must also include identification of barriers to achieve the committee's goals and must include identified strategies and policies that can help the committee realize its goals. The committee is to submit the annual report to the Governor and the Legislative Management. The Government Finance Committee was assigned the responsibility to receive this report for the 2015-16 interim.

Background

The Committee on Employment of People with Disabilities consists of four members of the public appointed by the Governor and five ex officio individuals representing the Department of Commerce Division of Workforce Development, the DHS Division of Vocational Rehabilitation, DPI, the Protection and Advocacy Project, and the DHS developmental disabilities programs. The committee is to collaborate, coordinate, and improve employment outcomes for working-age adults with disabilities.

Report on the Activities of the Committee on Employment of People with Disabilities

The Government Finance Committee learned the Committee on Employment of People with Disabilities held meetings on a quarterly basis. Activities of the Committee on Employment of People with Disabilities included conducting an employment survey and working with the DHS Divisions of Vocational Rehabilitation and Developmental Disabilities to award contracts to four community rehabilitation providers to provide integrated and competitive employment opportunities to individuals with intellectual disabilities.

AGREEMENTS BETWEEN NORTH DAKOTA AND SOUTH DAKOTA

Section 54-40-01 provides that an agency, department, or institution may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function the entity is authorized to perform by law. Any proposed agreement must be submitted to the Legislative Assembly or, if the Legislative Assembly is not in session, to the Legislative Management or a committee designated by the Legislative Management for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Management. The Government Finance Committee was assigned this responsibility for the 2015-16 interim.

The committee received information regarding the history of the bistate authority legislation. The South Dakota Legislature in 1996 enacted a law creating a legislative commission to meet with a similar commission from North Dakota to study ways North Dakota and South Dakota could collaborate to provide government services more efficiently. The North Dakota Legislative Council appointed a commission to meet with the South Dakota commission. As a result of the joint commission, the North Dakota Legislative Assembly enacted legislation relating to higher education and the formation of a cooperative agreement with South Dakota. The South Dakota commission proposed several initiatives, but the South Dakota Legislature did not approve any of the related bills.

During the 2015-16 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

OTHER INFORMATION RECEIVED

The committee received other comments regarding the committee's assigned studies and other information regarding:

- Road projects planned by DOT for the 2015 construction season;
- Higher education finance and governance;
- Selected agency plans to meet 2015-17 biennium general fund budget allotments and reductions; and
- Legislative Council reports including the *State Budget Actions for the 2015-17 Biennium* report, the *2015-17 Biennium Report on Compliance with Legislative Intent*, the June 2016 *Analysis of Major State Trust Funds*, the *2017-19 Biennium Preliminary General Fund Budget Outlook*, updated *Budget and Fiscal Trends,* and the *2016 North Dakota Finance Facts* brochure.

HEALTH CARE REFORM REVIEW COMMITTEE

The Health Care Reform Review Committee was assigned three studies.

Section 1 of 2015 House Bill No. 1035 directed the committee to consider continuing the study of the needs and challenges of the North Dakota health care delivery system.

Section 1 of 2015 House Bill No. 1378 directed a study of the proposed and final federal rules issued by the federal Health and Human Services Department relating to the essential health benefits under the federal Affordable Care Act (ACA).

House Concurrent Resolution No. 3003 (2015) directed a study of state contributions for state employee health insurance premiums.

Committee members were Representatives George Keiser (Chairman), Rick C. Becker, Alan Fehr, Robert Frantsvog, Eliot Glassheim, Mary C. Johnson, Jim Kasper, Mike Lefor, Alex Looysen, Alisa Mitskog, and Karen M. Rohr and Senators Tom Campbell, Gary A. Lee, Tim Mathern, David O'Connell, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

HEALTH CARE DELIVERY SYSTEM STUDY

Background

The study may include monitoring the implementation of the ACA, examining Medicaid Expansion and Medicaid reform, reviewing any impact on rural access to primary health care and emergency services, making recommendations to maintain and enhance rural primary health care and emergency services, and considering the feasibility of developing a state-based plan for a health care model that will comply with federal health care reform in a manner that will provide high-quality access and affordable care for North Dakota citizens. As part of the study, the University of North Dakota School of Medicine and Health Sciences Advisory Council was required to make periodic reports on the status of the biennial report developed pursuant to North Dakota Century Code Section 15-52-04.

2013-15 Interim Health Care Reform Review Committee

During the 2013-14 interim, the Health Care Reform Review Committee was assigned three studies:

- Section 15 of 2013 House Bill No. 1012 directed the committee to study the immediate needs and challenges of the North Dakota health care delivery system, implementing the Healthy North Dakota initiative, examining Medicaid reform, and the feasibility of developing a plan for a private health care model that will comply with federal health care reform in a manner that will provide high-quality, accessible, and affordable care for North Dakota. The committee considered population shifts, facility needs, personnel needs, rural access, regulatory public health functions, and vulnerable populations.
- Section 1 of 2013 House Bill No. 1034 directed the committee to study health care reform options, including the implementation of the ACA and state alternatives for state-based health care reform. The Insurance Commissioner, State Department of Health, and Department of Human Services were directed to provide status reports on the state of health insurance and health-related public assistance.
- Section 3 of 2013 House Bill No. 1362 directed the committee to consider studying the effects of the ACA.

The committee's recommendations included:

- House Bill No. 1035 (2015), which resulted in the 2015-16 study.
- House Bill No. 1036 (2015), which directed the State Department of Health to evaluate state programs to assist health professionals, with a focus on state loan repayment programs for health professionals, and make periodic reports to the Legislative Management on the outcome of the study. The Health Services Committee received these reports during the 2015-16 interim.
- House Bill No. 1037 (2015), which directed the Department of Human Services to study options for implementing income-based cost-sharing provisions for the Medicaid and Medicaid Expansion programs and report by July 1, 2016, to the Legislative Management on the outcome of the study. The Human Services Committee received this report during the 2015-16 interim.

- House Bill No. 1038 (2015), which required the Public Employees Retirement System (PERS) Board provide health benefits coverage under a policy that provides coverage for health services delivered by means of telehealth, which is the same as the policy coverage for health services delivered by in-person means. The mandate was limited to the PERS Board and expires in 2 years.
- House Bill No. 1039 (2015), which would have amended the group health policy mandate for substance abuse coverage. The bill would have applied the substance abuse coverage requirements to all health insurance policies, removed the coverage requirement formulas for different types of substance abuse services, and clarified required coverage must include inpatient treatment, treatment by partial hospitalization, residential treatment, and outpatient treatment. The bill failed.
- House Bill No. 1040 (2015), which revised the involuntary commitment proceeding law to update the language and to expand the statutory authority of physician assistants and advanced practice registered nurses to authorize physician assistants and advanced practice registered nurses to act as independent expert examiners in involuntary commitment proceedings.
- House Bill No. 1041 (2015), which provided when implementing medical assistance expansion under the ACA, the contract between the Department of Human Services and a private carrier must provide a reimbursement methodology for all medications and dispensing fees which identifies the minimum amount paid to pharmacy providers for each medication, provides full transparency of all costs and all rebates in aggregate, allows an individual to obtain medication from a pharmacy that provides mail order service, ensures pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification, and ensures the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's contractors or subcontractors, which is not representative of the amounts allowed under the reimbursement methodology.

Affordable Care Act

In March 2010 President Barack Obama signed into law two pieces of legislation that laid the foundation for a multiyear effort to implement health care reform in the United States--the Patient Protection and Affordable Care Act (H.R. 3590) and the Health Care and Education Reconciliation Act of 2010 (H.R. 4872)--which together are referred to as the Affordable Care Act or ACA. The Affordable Care Act crafted new structural models to increase access and affordability of health care coverage, to improve operational governance of the health insurance industry, to provide consumers protection, and to provide new tools for the improvement of the health care delivery system and patient outcomes.

Since enactment of the ACA, North Dakota has made several decisions regarding implementation, including whether to administer the health benefit exchange, whether to select the state's essential health benefits or instead allow the essential health benefits to be selected through the default method, and whether to participate in Medicaid Expansion.

Health Benefit Exchanges

During the November 2011 special legislative session, the Legislative Assembly considered legislation that would have provided for a state-administered health benefit exchange. The legislation failed and the state is allowing the federal government to administer its health benefit exchange. Guidelines issued by the federal Department of Health and Human Services indicate in the future, states will be allowed to transition from one exchange model to another. A state may alter its exchange structure and administration model by submitting an exchange blueprint and having it approved by the Department of Health and Human Services.

Medicaid Expansion

As enacted, the ACA provided for all states to expand Medicaid coverage to eligible state residents with incomes below 138 percent of the federal poverty line. Failure to comply with this Medicaid Expansion requirement could result in penalties. However, the June 28, 2012, ruling of the United States Supreme Court in *NFIB v. Sebelius*, found the ACA's Medicaid Expansion provision is unconstitutionally coercive on states and that this situation is remedied by limiting Department of Health and Human Service's enforcement authority. The practical effect of the ruling is states have the option of expanding Medicaid under ACA. A state that does not expand Medicaid is not subject to penalties under the ACA.

Section 1 of 2013 House Bill No. 1362 directed the Department of Human Services to expand the state's Medicaid program coverage as authorized under the ACA. The department was directed to implement the expansion by bidding through private carriers or utilizing the health insurance exchange. The Department of Human Services implemented Medicaid Expansion through a contract with a private carrier--Sanford Health Plan. Section 1 of the bill has an expiration date of August 1, 2017.

State Innovation Waivers

Section 1332 of ACA authorizes states to submit applications for state innovation waivers. The final rules for these waivers were published March 14, 2011, providing that beginning in 2017, a state may qualify for a state innovation waiver to allow the state to pursue its own innovative strategies to ensure residents have access to high-quality affordable health insurance. To qualify for a waiver, the state's plan must provide affordable insurance coverage to at least as many residents as the ACA and may not increase the federal deficit.

Medicaid Waivers

The federal government provides four primary types of waivers and demonstration projects to allow states to test new or existing ways to deliver and pay for health care services through Medicaid and the children's health insurance program.

1. Section 1115 research and demonstration projects waiver - Allows states to apply for program flexibility to test new or existing approaches to financing and delivering Medicaid and the children's health insurance program. Typically, Section 1115 demonstrations are approved for a 5-year period and may be renewed, for an additional 3 years. Demonstrations must be budget neutral to the federal government, so during the course of the project federal Medicaid expenditures will not be more than federal spending without the waiver.
2. Section 1915(b) managed care waiver - Allows states to apply for waivers to provide services through managed care delivery systems or otherwise limit a person's choice of providers. Within this waiver, there are four options:
   a. Section 1915(b)(1) allows an applicant to implement a managed care delivery system that restricts the types of providers people may use to get benefits;
   b. Section 1915(b)(2) allows a county or local government to act as a choice counselor or enrollment broker to help people pick a managed care plan;
   c. Section 1915(b)(3) allows the use of savings the state gets from a managed care delivery system to provide additional services; and
   d. Section 1915(b)(4) allows a state to restrict the number or type of providers that may provide specific services, such as disease management or transportation.
3. Section 1915(c) home- and community-based services waiver - Allows states to apply for waivers to provide long-term care services in home and community settings rather than in institutional settings.
4. Concurrent Sections 1915(b) and 1915(c) waiver - Allows states to apply to simultaneously implement two types of waivers to provide a continuum of services to elderly people with disabilities.

Testimony

Affordable Care Act

The committee received status reports from a representative of the Insurance Department on the implementation of the ACA, including data on the number of North Dakotans covered under grandfathered and nongrandfathered health plans, the phasing out of the reinsurance and risk corridor measures to spread risks among insurers, and rates and open enrollment.

The committee conducted several panel discussions of representatives of insurers in the state to gather information regarding the implementation of and upcoming changes to the ACA as well as regarding concerns related to the ACA. Topics addressed by the panel participants included:

- The ACA provisions that impact premium, such as transitional reinsurance, risk corridors, and health insurance provider fees.
- Upcoming ACA changes, such as changes in the tool used to determine the actuarial value and the identification of the metallic plans, the 2018 Cadillac plan tax, and employer reporting requirements.
- The distribution of the carriers' plans in high-deductible plans, platinum plans, gold plans, silver plans, and bronze plans.
- The trend of employers moving towards high-deductible plans.

The committee received status reports on the implementation of the ACA from representatives of the Department of Human Services, including updates on Medicaid Expansion, the children's health insurance program, the eligibility modernization project, and hospital presumptive eligibility for Medicaid Expansion.

Medicaid Expansion

The committee tracked the implementation of Medicaid Expansion and considered options to the Medicaid Expansion program. The committee considered five options:

1. Continue with the state's Medicaid Expansion contract;
2. Continue with a revised version of the state's Medicaid Expansion contract;
3. Allow the Medicaid Expansion law to sunset on August 1, 2017;
4. Provide Medicaid Expansion through a Department of Human Services administered program, similar to traditional Medicaid; and
5. Provide Medicaid Expansion through an alternative model, such as what Arkansas and Tennessee have done or have considered.

The committee received reports from representatives of Sanford Health Plan, the carrier administering Medicaid Expansion in the state, regarding membership enrollment figures and demographics, utilization and utilization of emergency rooms, preventative care and preventative screenings, the coordinated service program, case management opportunities, quality improvement projects, the provider network, the pharmacy network, the status of the Pharmacy Engagement Program for the North Dakota Medicaid Expansion Pharmacies, and utilization data.

The committee was informed Medicaid Expansion enrollment has plateaued, retention is very important, and the longer a member is continually enrolled, the more likely that member is to comply with a treatment plan and seek preventative care.

The committee considered the federal funding levels for Medicaid Expansion.

Calendar Year	Federal Funding
2014	100%
2015	100%
2016	100%
2017	95%
2018	94%
2019	93%
2020	90%

A representative of the Department of Human Services testified:

- The Medicaid Expansion contract with Sanford Health Plan is able to be renewed annually and the contract period is each calendar year.
- The 2013 request for proposal included six renewal options and one 12-month extension option.
- If Sanford Health Plan wants to terminate the contract without cause, it must provide a minimum of 90 days' notice to the department.
- If the department wants to terminate the contract without cause, it must provide Sanford Health Plan a minimum of 60 days' notice.

A representative of the Department of Human Services reported on efforts the department is taking to decrease costs associated with Medicaid and Medicaid Expansion to comply with the decreasing funds resulting from the allotment.

The committee received a report on the covered benefits under Medicaid and under Medicaid Expansion, Medicaid Expansion income eligibility levels, and Medicaid Expansion premium rates. Medicaid Expansion does not provide adults age 21 and older coverage for dental and vision services. The anticipated cost of adding dental and vision coverage for these uncovered adults ranges from $36.57 to $52.10 per month.

The committee considered the cost of administering Medicaid Expansion as a managed care product versus administering it in the same way traditional Medicaid is administered.

Managed Care	Traditional Medicaid
The administrative costs are part of the per member per month payment made to Sanford Health Plan.	The current traditional Medicaid enrollment is approximately 68,000. Increasing the enrollment by one-third would increase administrative staffing needs, such as: • Utilization review • Care management • Claims processing
Because the administrative costs are part of the per member per month payment, the federal match is at Medicaid Expansion match rates.	Administrative costs would be at the traditional Medicaid administrative match rates.
Sanford Health Plan has a member center as part of its administrative services. North Dakota Medicaid does not have this.	Would no longer need actuarial services or external quality review. Would increase transaction contracts, such as ID cards, third-party liability, prior authorization, and certificate of need.

If the Department of Human Services took over administration of Medicaid Expansion as a managed care program, the department would need to make changes to the Medicaid management information system. The estimated cost to change the system is $3.4 million, which would be eligible for 90/10 federal/state funding.

The committee received testimony from a representative of the Health Policy Consortium regarding the positive impact Medicaid Expansion has had on decreasing bad debt of hospitals, patient care, and on health care facilities in the state.

The committee received information on how some states have implemented or considered implementing alternative Medicaid Expansion programs through federal waivers. Arkansas received a federal Section 1115 demonstration waiver to implement Medicaid Expansion by using Medicaid funds as premium assistance to purchase coverage through the health insurance exchange. Tennessee considered multiple proposals to implement an alternative Medicaid Expansion proposal that would include premium assistance; however, these proposals have not passed the state legislature.

The committee received a report from a representative of the Department of Human Services regarding the feasibility of Medicaid Expansion cost-sharing. Cost-sharing may relate to copayments and premium. The report included a list of copayments applicable to Medicaid Expansion, identification of services exempt from cost-sharing, populations exempt from cost-sharing, the allowable consequences if a client fails to pay the patient's share, the maximum Medicaid cost-sharing limits, aggregate limits on premium cost-sharing, required tracking and sharing of cost-sharing, and the possibility of being granted a 1115 waiver for a cost-sharing demonstration project and premium cost-sharing limitations if the waiver is not granted.

The committee reviewed summaries of cost-sharing programs in Arkansas, Iowa, Indiana, Michigan, and Montana. The committee was informed if premium cost-sharing, that requires tracking, is implemented for the Medicaid Expansion program, the Department of Human Services, Sanford Health Plan, and actuaries would need to determine if there would be an impact on the per member per month payments, including the administrative component of the payment.

As part of the committee consideration of cost-sharing, the committee received testimony from health facilities, insurers, and consumer advocates regarding copayment and premium cost-sharing.

Indian Country

The committee received overviews of how health services are provided in Indian Country as well as the multiple ways American Indians may receive health care services. The committee learned about the history of Indian Health Services, how the ACA affects Indian Health Services and the American Indian consumer, opportunities and activities to improve health care being provided to American Indians, and challenges American Indians face in addressing health disparities.

The committee received testimony in support of Medicaid Expansion and its positive impact on the health of American Indians. The committee was informed the ACA is the largest expansion of Indian health care in our generation. Not only does the ACA cover American Indians through Medicaid Expansion and health insurance subsidies, the ACA permanently reauthorizes the Indian Health Care Improvement Act, which is the legal authority for provision of health care to American Indians. Although the provision of health care to American Indians is a federal obligation, there are implications for the North Dakota Medicaid system.

The committee received a report on federal guidance issued February 26, 2016, regarding increased state funding opportunities for services a Medicaid-eligible American Indian receives through Indian Health Services or a tribal facility. The report indicated:

- Indian Health Services and tribal facilities may enter care coordination agreements with non-Indian Health Services providers and non-tribal providers to furnish certain services for patients who are American Indian Medicaid beneficiaries, and the amounts paid by the state for services requested by facility practitioners in accordance with those agreements would be eligible for the enhanced federal matching authorized under section 1905(b) of the Social Security Act at a rate of 100 percent.
- At a minimum, care coordination will involve:

  The Indian Health Services or tribal facility practitioner providing a request for specific services by electronic or other verifiable means and relevant information about the practitioner's patient to the non-Indian Health Services provider or non-tribal provider;

  The non-Indian Health Services provider or non-tribal provider sending information about the care it provides to the patient, including the results of any screening, diagnostic, or treatment procedures, to the Indian Health Services or non-tribal facility practitioner;

The Indian Health Services or tribal facility practitioner continuing to assume responsibility for the patient's care by assessing the information and taking appropriate action, including, when necessary, furnishing or requesting additional services; and

The Indian Health Services or tribal facility incorporating the patient's information in the medical record through the health information exchange or other agreed-upon means.

To ensure accountability for program expenditures in states where Indian Health Services or tribal facilities elect to implement the policy described in the guidance letter, the Medicaid agency will need to establish a process for documenting claims for expenditures for items or services received through an Indian Health Services or tribal facility.

The documentation must be sufficient to establish:

- The item or service was furnished to an American Indian patient of an Indian Health Services or tribal facility practitioner pursuant to a request for services from the practitioner;
- The requested service was within the scope of a written care coordination agreement under which the Indian Health Services or tribal facility practitioner maintains responsibility for the patient's care;
- The rate of payment is authorized under the state plan and is consistent with the requirements set forth in the guidance letter; and
- There is no duplicate billing by both the facility and the provider for the same service to the same beneficiary.

The benefits under this federal care coordination include:

- American Indians can be eligible for both Indian Health Services and Medicaid;
- When care for Medicaid-eligible American Indians meets the four-part test, Indian Health Services bills Medicaid and the federal government pays 100 percent of these services; and
- When Medicaid-eligible American Indians receive services outside Indian Health Services, the non-Indian Health Services provider bills Medicaid and the federal government pays at the state's regular rate.

Waivers

The Department of Human Services in October 2015 submitted renewal requests to the Centers of Medicare and Medicaid Services for both the 1915(b) waiver and 1115 waivers. These waivers were approved by the Centers of Medicare and Medicaid Services. The Medicaid 1915(b) waiver authorizes the department to provide Medicaid Expansion as a managed care organization program allowing mandatory enrollment of individuals, including American Indians, eligible for Medicaid Expansion into the plan offered by a private carrier (managed care organization). The Medicaid 1115 waiver authorized North Dakota to operate a single managed care plan in urban areas.

The committee was informed the Section 1332 innovation waiver has a fairly lengthy approval process by the federal government; however, although the rules are final, the specifics of the process are not yet known. If the state were to pursue this waiver, neither the Insurance Department nor Department of Human Services would have the data necessary to do the state analysis requirement. Thus, pursuit of this waiver would require third-party experts.

Health-Related Surveys

The committee received reports on the Behavioral Risk Factor Surveillance System program and the related survey, which is the world's largest random-digit-dialed survey that reaches adults in private residences, and on the Youth Behavior Risk Survey, which is completed by students in grades 7 through 12.

University of North Dakota School of Medicine and Health Sciences Advisory Council Biennial Report

The committee received a report on the status of the University of North Dakota School of Medicine and Health Sciences Advisory Council biennial report required by Section 15-52-04. The committee received a brief history of the biennial report and the outcomes of previous reports.

The 2015 biennial report will be completed in late 2016, and will be available for the 65th Legislative Assembly. This report will focus on mental health and behavioral issues, provide data on nonphysician providers, provide greater assessment of the impact of the ACA, and provide a preliminary analysis of the impact of the University of North Dakota School of Medicine and Health Sciences and Healthcare Workforce Initiative. The committee received an overview of the ongoing activities of the initiative.

Considerations

The committee considered the impact Medicaid Expansion has had on North Dakotans and health care facilities, providers, and insurers, and generally expressed support for continuation of the program. However, in considering benefit design and how the program is administered, the Department of Human Services was unable to provide the committee the financial information the committee needed to make specific recommendations. The committee was informed this financial data will be available in time for the 2017 legislative session. The committee members generally supported removing the statutory requirement directing the Department of Human Services to implement Medicaid Expansion through a private carrier or through the health insurance exchange to provide the flexibility to administer a program that is well designed for North Dakota and is fiscally responsible. The committee supported consideration of provider reimbursement rates, premium cost-sharing, and transparency.

Recommendations

The committee recommends House Bill No. 1032 to remove the July 31, 2017, sunset for the Medicaid Expansion program; to provide Medicaid Expansion provider reimbursement rates are the same as the provider reimbursement rates set for traditional Medicaid; and to remove the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange.

The committee also recommends House Bill No. 1033 to remove the July 31, 2017, sunset for the Medicaid Expansion program; to remove the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange; to direct the Department of Human Services to pursue a federal Medicaid waiver to allow the department to implement premium cost-sharing for individuals enrolled in Medicaid Expansion if the cost-sharing program does not have a negative fiscal effect for the state; and to direct the department to pursue care coordination agreements to increase federal reimbursement for Medicaid-eligible American Indians.

The committee also recommends House Bill No. 1034 to remove the July 31, 2017, sunset for the Medicaid Expansion program; to remove the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange; to provide if the Department of Humans Services contracts with a private carrier, the contract must provide the department with full access to provider reimbursement rates and the department is directed to consider these rates in selecting a private carrier; and to direct the department to report to the Legislative Management regarding provider reimbursement rates under the Medicaid Expansion program.

ESSENTIAL HEALTH BENEFITS STUDY

This study was to include a review of the rules relating to the state's ability to participate in defining the state-based essential health benefits package under the ACA for plan years 2017 and beyond, how the state may be authorized to select a benchmark plan for plan years 2017 and beyond, and the deadlines related to these rules and related decisions.

Background

Under the ACA, a health insurance issuer that offers health insurance coverage in the individual or small group market must ensure coverage includes the essential health benefits package required under the ACA. Initially, it was assumed the federal government would issue a single set of essential health benefits package requirements for all states. On December 16, 2011, the United States Department of Health and Human Services released a bulletin that each state's essential health benefits package will be based upon a benchmark plan selected by that state. Each state may choose a benchmark plan from one of the following four benchmark plan types:

1. The largest plan by enrollment in any of the three largest small group insurance products in the state's small group market;
2. Any of the three largest state employee health benefit plans by enrollment;
3. Any of the three largest national Federal Employees Health Benefits Plan options by enrollment; or
4. The largest insured commercial non-Medicaid health maintenance organization operating in the state.

In addition to the services covered by the state's selected benchmark plan, the state's essential health benefits package must include the following 10 categories of services:

1. Ambulatory patient services;
2. Emergency services;
3. Hospitalization;
4. Maternity and newborn care;
5. Mental health and substance use disorder services, including behavioral health treatment;

6. Prescription drugs;
7. Rehabilitative and habilitative services and devices;
8. Laboratory services;
9. Preventive and wellness services and chronic disease management; and
10. Pediatric services, including oral and vision care.

If a state failed to choose a benchmark plan by September 30, 2012, the default plan was the nongrandfathered small group plan with the largest enrollment in the state. For this initial essential health benefits package selection, North Dakota chose to use the largest insured commercial non-Medicaid health maintenance organization operating in the state as the state's benchmark plan for 2014 through 2016 plan years.

The federal government directed the states to select, by June 1, 2015, their essential health benefits benchmark plans for plan years 2017 and beyond. If a state would fail to choose a benchmark plan by the federal deadline, the default plan would be the nongrandfathered small group plan with the largest enrollment in the state.

Unlike the first time North Dakota was faced with selecting a benchmark plan, the 64th Legislative Assembly passed House Bill No. 1378, which established a process for an interim committee to study the state's options and report to the Legislative Management. The Legislative Management may issue a directive to the Governor to notify the federal government of North Dakota's selection.

In studying the federal rules, the committee was to:

- Consider the state's ability to participate in defining the state's essential health benefits package for plan years 2017 and beyond;
- Consider how the state may be authorized to select an essential health benefits benchmark plan;
- Consider the federal deadlines related to these federal rules and related decisions; and
- Make findings and report the findings to the Legislative Management, which may issue a directive to the Governor to notify the federal government of the state's decisions relating to the state's benchmark plan and essential health benefits package for plan years 2017 and beyond.

If the Legislative Management were to issue a directive under this bill, the directive was to not direct the federal government to modify the state's existing essential health benefits package for plan year 2017 in a way that adds benefits to the essential health benefits package, unless the added benefits:

- Were in one or more of the state's benchmark plan options considered for plan year 2014;
- Were in the benchmark plan options for plan year 2014; or
- Are in at least one of the 10 benchmark plan options for plan years 2017 and beyond.

A Legislative Management directive under this bill may not result in state liability due to the state reimbursement requirements under the ACA.

Additionally, if over the course of the interim, all or a portion of the ACA is repealed, the committee was directed to consider whether the repeal impacts the state's decision regarding the state's benchmark plan and essential health benefits package for the 2017 plan year and beyond.

Testimony

The committee at its July 22, 2015, meeting focused on the essential health benefits study and:

- Received an overview of the history of this study and the selection process in place for the essential health benefits package for plan years 2017 and beyond;
- Received a copy of the Insurance Department's *Analysis of Essential Health Benefits Under the Patient Protection and Affordable Care Act*, dated August 2012, which was prepared for the initial selection of the state's essential health benefits package effective with the plan year 2014;
- Received a table comparing the 10 benchmark plan choices for the essential health benefits package selection for plan years 2017 and beyond; and

- Assembled a panel of health insurers to provide the committee information relevant to the selection of a benchmark plan to establish the state's essential health benefits package.

The committee learned the deadline for a state to report that state's essential health benefits selection to the United States Department of Health and Human Services was June 1, 2015, with some states being granted an extension to July 1, 2015. The United States Department of Health and Human Services was informed of North Dakota's selection procedure and timeline established through 2015 House Bill No. 1378.

A representative of the Insurance Department reported although North Dakota did not meet the federal deadline, and is therefore considered to have selected the default essential health benefits benchmark plan, if North Dakota were to make an affirmative selection before the publication of the final federal rules, it is likely the state's selection would be valid and included and published in the final rule.

A representative of the Insurance Department testified once a state informs the federal government of the state's essential health benefits benchmark plan, the selection will be incorporated into federal rules, health insurance carriers will design health plans, the designed plans will be submitted for rate and form approval, the plans will be placed on the state's health benefit exchange in time for the 2017 open enrollment period, and the plan will be effective plan year 2017.

The committee was informed North Dakota's default essential health benefits benchmark plan is the state's largest plan by enrollment in the small group insurance product, which is Blue Cross Blue Shield's small group exchange plan, which as of March 31, 2014, had an enrollment of 3,222.

In reviewing the selection process, the committee was reminded if a state chooses to add mandated benefits, the state would be required to pay for any benefits in addition to the essential health benefits required; however, if the state chooses a benchmark plan from the 10 identified benchmark plans which has more benefits than the existing essential health benefits benchmark plan, there would not be additional costs to the state.

The committee was informed by a representative of the Insurance Department it is unlikely selection of any of the 10 benchmark plans would decrease premiums; however, some plans may increase premiums. Although the benchmark selected will impact covered benefits, since the benchmark plans reflect a point in time, some of those benchmark plans have later changed covered benefits. Therefore, it is challenging to know the exact impact the selection of a benchmark plan will have on existing policies.

The committee was informed the nature of essential health benefits is that the health plans in the state have become more alike and therefore the 10 benchmark plans are very similar to each other, with the largest difference being the grandfathered state employee health plan, which offers fertility benefits. There is still a large portion of the state's insureds who have a grandfathered plan, and under ACA these grandfathered plans are not required to provide the essential health benefits. In addition, a representative of the Insurance Department testified there have been some shifts in the state from fully funded insurance products to self-funded plans, which also are not required to provide essential health benefits. As premiums increase over the years, consumers tend to shop for perceived bargains and move to higher deductible plans, resulting in an increase in the incidence of unpaid medical bills which leads to providers increasing the cost of services and increased premiums. The committee was informed implementation of the ACA is too recent to determine whether the ACA will help stem this trend.

The committee was informed there is a value to standardization of health plan benefits. As benefits become more standardized, price becomes more similar and the consumer tends to focus more on the quality of services.

The committee considered the pros and cons of selecting different essential health benefits benchmark plans and the benefits covered and not covered in each of the 10 benchmark plans. As the health insurance plans in the state become more alike, the consequence of the essential health benefits benchmark decision may be minimal. Because of adverse selection, essential health benefits set both a ceiling and a floor and all the plans migrate to the essential health benefits.

Recommendation

The committee recommended North Dakota select the Blue Cross Blue Shield of North Dakota small group benchmark plan as the state's essential health benefits package for plan years 2017 and beyond, the nongrandfathered small group plan with the largest enrollment. This selected plan also was the default plan the United States Department of Health and Human Services would use if North Dakota did not notify the department of a selected benchmark plan. The committee notified the Chairman of the Legislative Management in July 2015 of its recommendation. The result is for plan years 2017 and beyond the state's essential health benefits are based on this benchmark plan.

STATE EMPLOYEE HEALTH INSURANCE PREMIUMS STUDY

Background

The study was to include the feasibility and desirability of establishing a maximum state contribution for state employee health insurance premiums and the effect of losing the state's grandfathered status under the ACA.

Previous Legislative Study

The 2013-14 interim Government Finance Committee studied the state contribution to the cost of state employee health insurance premiums, including the feasibility and desirability of establishing a maximum state contribution for state employee health insurance premiums. The state health plan is exempt from certain provisions of the ACA as long as the plan's grandfathered status is continued. The committee learned the plan's grandfathered status may be lost if certain existing plan benefits are not maintained or if an employee is required to pay more than 5 percent of a single or family premium rate. The Government Finance Committee recommended House Concurrent Resolution No. 3003, which was approved by the 2015 Legislative Assembly and resulted in additional study.

Plan History

Chapter 54-52.1 provides group medical insurance is available to an employee who meets the eligibility requirements of being a permanent employee of the state. To be eligible, an employee must be at least 18 years of age, occupy a regularly funded position, work at least 20 hours per week, and work at least 20 weeks each year. A temporary employee who works at least 20 hours per week and 20 weeks per year may purchase health insurance at that employee's own expense or the employing agency may pay the premium.

The 1963 Legislative Assembly enacted Chapter 52-12, authorizing state agencies, either individually or jointly with other agencies, to enter a group hospitalization and medical care plan and group life insurance plan for each agency's employees. The agencies were required to pay $5 per month for each participating employee's insurance premium. An employee could elect to participate in a single or family plan.

The 1971 Legislative Assembly repealed Chapter 52-12 and enacted Chapter 54-52.1, establishing the uniform group insurance program. The program was placed under the authority of the Public Employees Retirement Board. The board was directed to solicit bids and contract for the provision of insurance benefits coverage with an insurance carrier determined by the board.

From 1971 to 1983, Blue Cross Blue Shield of North Dakota provided and administered the health insurance benefits plan for public employees. In 1983 the Public Employees Retirement Board was authorized by Section 54-52.1-04.2 to establish a plan of self-insurance for providing health benefits coverage under an administrative services-only contract or a third-party administrator contract if the board determined during any biennium a self-insured plan is less costly than the lowest bid submitted by an insurance carrier. The board exercised the option to implement a self-insurance health benefits plan and administered the program in that manner from July 1, 1983, through June 30, 1989.

Although the Public Employees Retirement Board began its administration of the self-insured health benefits plan on July 1, 1983, with reserves of $2,143,880, claim expenditures and other expenses of the program exceeded premium income and other revenue in 1984. By June 1987 the fund balance was a negative $4,759,963 with estimated outstanding claims payable of $4,600,000.

In 1987 the Public Employees Retirement Board incorporated various cost-containment components into the health benefits plan which included:

1. Implementation of a program of concurrent review of inpatient hospitalizations designed to eliminate unnecessary treatment or prolonged hospital stays and to allow consideration of less expensive appropriate treatment for long-term medical care.
2. Implementation of a program of mandatory second surgical opinions for certain elective surgeries. This program did not generate anticipated results, and after a 1-year trial period, was discontinued.
3. Expansion of contract deductibles to include all inpatient, outpatient, and physician services.
4. Increase of the coinsurance base from the first $2,000 in charges to the first $4,000 in charges.
5. Implementation of a preferred pharmacy program.
6. Establishment of a separate premium rate for retirees, based on retiree claims experience.
7. Introduction of a $25 copayment for each hospital emergency room visit.
8. Adjustment of the Medicare coordination of benefits formula applied to retiree members of the plan.

Due to the introduction of these cost-containment initiatives and the availability to public employees of a number of attractive health maintenance organization plans, approximately 3,350 membership contracts, constituting 23 percent of the total contracts of the health benefits plan, were lost during the 1987 open enrollment period, resulting in a decrease of approximately $563,000 per month in premium income.

The decision by the Medcenter One Health Maintenance Organization, the health maintenance organization with the largest PERS eligible enrollment, to discontinue its participation agreement with PERS as of July 1, 1988, and substantial increases in premiums charged by other health maintenance organizations, resulted in a substantial number of public employees choosing the PERS health benefits plan during the 1988 open enrollment period.

In January 1989 the Public Employees Retirement Board voted to end the state-funded health insurance program and buy the coverage from Blue Cross Blue Shield of North Dakota. Officials of PERS predicted the state would end the 1987-89 biennium with a $3.5 million deficit and would need to increase premium rates by 65 percent in the 1989-91 biennium. The Blue Cross Blue Shield of North Dakota bid of approximately $35 million to fund state employees' health insurance for the 1989-91 biennium included provisions the company would absorb approximately $5 million in unpaid claims when the company took over in July 1989.

Senate Bill No. 2026 (1989) appropriated $1.2 million from the fund for unemployment compensation claims to PERS for the state group health program for the period beginning January 1, 1989, and ending June 30, 1991.

Until 1993 the health insurance program charged premiums based on each employee's election of a single or family plan. Beginning with the 1993-95 biennium, the Public Employees Retirement Board began to charge a combination rate that is a blended rate per employee, whether a single or family plan is chosen. The blended rate enables agencies to budget the same premium rate for all employees; therefore, an agency's budget is not adversely affected if an employee electing to receive single health insurance coverage quits and is replaced by an employee electing to receive family coverage.

The following schedule reflects the monthly premiums charged since the program began in 1963.

Biennium	Single Plan	Percentage Change	Family Plan	Percentage Change	Combination Rate	Percentage Change
1963-65	$5.00		$21.00			
1965-67	$8.55	71.0%	$21.50	2.4%		
1967-69	$10.75	25.7%	$25.00	16.3%		
1969-71	$14.45	34.4%	$34.90	39.6%		
1971-73	$15.95	10.4%	$41.90	20.1%		
1973-75	$14.46	(9.3%)	$41.90	0.0%		
1975-77	$19.50	34.9%	$59.95	43.1%		
1977-79	$25.50	30.8%	$67.42	12.5%		
1979-81	$34.84	36.6%	$87.40	29.6%		
1981-83	$42.68	22.5%	$107.07	22.5%		
1983-85	$50.28	17.8%	$140.28	31.0%		
1985-87	$60.00	19.3%	$168.00	19.8%		
1987-89	$68.28	13.8%	$191.28	13.9%		
1989-91	$99.82	46.2%	$280.39	46.6%		
1991-93	$108.00	8.2%	$304.00	8.4%		
1993-95					$254.00	
1995-97					$265.00	4.3%
1997-99					$301.00	13.6%
1999-2001					$349.72	16.2%
2001-03					$409.09	17.0%
2003-05					$488.70	19.5%
2005-07					$553.95	13.4%
2007-09					$658.08	18.8%
2009-11					$825.66	25.5%
2011-13					$886.62	7.4%
2013-15					$981.69	10.7%
2015-17					$1,130.22	15.1%

From 1963 through 1969, the state contributed $5 per month toward the cost of health insurance for state employees. State employees paid any additional amount for single or family coverage. During the 1969-71 biennium, the state contributed $7.50 per month. For the period 1973 through 1979, the state paid the cost of a single health insurance plan and employees choosing a family plan paid any additional cost. Since 1979 the state has paid the full cost of a single or family plan for eligible state employees.

The following schedule provides information on health insurance premiums and the cost of health insurance increases since the 1997-99 biennium.

State Employee Health Insurance Increases (Excluding Higher Education)						
Biennium	Monthly Premium	Increase From Previous Biennium	Percentage Increase	General Fund	Special Funds	Total
1997-99	$301	$36	13.6%	$7,026,674	$3,619,802	$10,646,476
1999-2001	$350	$49	16.2%	$6,989,537	$3,858,174	$10,847,711
2001-03	$409	$59	17.0%	$11,182,551	$6,001,252	$17,183,803
2003-05	$489	$80	19.5%	$8,027,122	$8,258,216	$16,285,338
2005-07	$554	$65	13.4%	$5,335,798	$7,903,870	$13,239,668
2007-09	$658	$104	18.8%	$9,115,817	$12,346,031	$21,461,848
2009-11	$826	$168	25.5%	$15,889,790	$20,215,824	$36,105,614
2011-13	$887	$61	7.4%	$7,179,809	$5,995,847	$13,175,656
2013-15	$982	$95	10.7%	$11,127,312	$9,700,989	$20,828,301
2015-17	$1,130	$148	15.1%	$19,877,362	$14,316,411	$34,193,773

As of July 2015, there were approximately 15,177 active state health contracts, including higher education employees. Based on this number, total funding required for a biennium for health insurance premiums is $411,680,375.

Excluding higher education, state agencies budgeted for 9,627 state health contracts for the 2015-17 biennium. Based on this number, total funding for health insurance premiums for the 2015-17 biennium was $261,135,071, of which $151,766,345 was from the general fund.

High-Deductible Plan

Section 54-52.1-18, as enacted by the 2011 Legislative Assembly, directs the Public Employees Retirement Board to develop and implement a high-deductible health plan with a savings account as an alternative to the regular health insurance plan. The difference between the cost of the high-deductible health plan premium and the regular health plan premium for single and family health plans is deposited in a health savings account for the benefit of the participating employee. The high-deductible health plan has higher annual deductibles and larger out-of-pocket costs, which are partially offset by the employer contribution to the health savings account. The health savings account is not subject to federal income tax at the time of deposit and funds may be carried over and used in subsequent years. The account is owned by the participant, the state makes contributions to the account, there is no fund balance limit, funds in the account continue into subsequent years if not used, and the account is portable if the employee discontinues employment with the state. The state currently contributes $60.74 per month into the account for employees with a single plan and contributes $147 per month into the account for employees covered under a family plan. As of May 2015, there were 164 employees enrolled in the high-deductible health plan.

Calculation of Health Insurance Premiums

During the spring and summer of even-numbered years, PERS begins the process to renew the existing contract or obtain bids for state employee health insurance policies for the following biennium. The cost of renewal is normally returned in August, reviewed by the Public Employees Retirement Board, and if accepted the data is then submitted to the Office of Management and Budget for inclusion in the executive budget. Renewals received for health insurance premiums generally include several options that may affect the amount of the premium. Options include changes in deductible amounts, coinsurance amounts, copayment amounts, and prescription drug benefits. The health insurance plan also may have reserves that can be used to buy down the cost of premiums. If a policy is not renewed, a request for proposal is issued.

Affordable Care Act

The state health plan is exempt from certain provisions of the ACA as long as the plan's grandfathered status is continued. The plan's grandfathered status may be lost if certain existing plan benefits are not maintained or if the employer contribution to employees' health insurance premiums is reduced by more than 5 percent from the contribution rate in effect on March 23, 2010. If an employee is required to pay more than 5 percent of a single or family premium rate the state plan also may lose its grandfathered status.

Estimated Employee Cost Based on Percentage Contributions for Premiums

For the 2015-17 biennium, state agencies are charged a blended rate of $1,130.22 per month for a state employee's health insurance premium. The blended rate is based on a single health insurance plan rate of $543.28 per month and a family health insurance plan rate of $1,311.74. As of March 2014, there were 3,433 employees with a single plan and 11,744 employees with a family plan. The following schedule details the monthly cost to state employees if they were required to pay a percentage of their health insurance premiums.

Monthly Premium[1]	1 Percent of Premium	2 Percent of Premium	3 Percent of Premium	4 Percent of Premium	5 Percent of Premium
Single plan - $543.28	$5.43	$10.87	$16.30	$21.73	$27.16
Family plan - $1,311.74	$13.12	$26.23	$39.35	$52.47	$65.59

[1]Reflects monthly premiums for the 2015-17 biennium.

The following table details the estimated biennial amounts that would be paid by state employees if they were required to pay a percentage of health insurance premiums.

Estimated Total Biennial Amounts to Be Paid by State Employees for Health Insurance Based on Percentage of Premium Paid						
	Number of Plans	1 Percent	2 Percent	3 Percent	4 Percent	5 Percent
Single plan	3,433	$447,619	$895,239	$1,342,858	$1,790,477	$2,238,096
Family plan	11,744	3,697,218	7,394,436	11,091,654	14,788,872	18,486,089
Total	15,177	$4,144,837	$8,289,675	$12,434,512	$16,579,349	$20,724,185

Testimony and Committee Considerations

The committee received testimony from representatives of PERS, insurers, the Human Resource Management Services Division, public employee representatives, and an employer.

Representatives of PERS and Sanford Health Plan provided detailed overviews of the current PERS health plan, focusing on plan demographics, plan participation, plan history, plan design, the ACA, and state premiums. This overview provided the following information:

- As of September 2015, there were 16,087 active state employees, 15,142 of whom were covered under the health plan and 945 of whom were not covered due to dual coverage or waived coverage.
- As of January 2015, there were 45 counties, 38 school districts, 50 cities, and 64 other political subdivisions participating in the state health plan.
- Coverage provided to pre-Medicare and Medicare retirees.
- The history of the state's experience with self-insured health coverage.
- The premium history of the health plan, out-of-pocket cost history under the health plan, the history of the budget appropriation for the health plan, and state employee salary history.
- The history of the high-deductible health plan option.
- The history of PERS using reserve funds to buy down premium.

  2003-05 - $6 million

  2005-07 - $14.3 million

  2013-15 - $11 million
- A review of the wellness initiatives available under the health plan and the history of the wellness plan, including the collaborative drug therapy program, healthy pregnancy program, tobacco cessation benefits, preventative cancer screenings benefits, and fitness center reimbursements.
- A comparison of the benefits and premiums for the state's health plan grandfathered under the ACA and the health plan not grandfathered under the ACA.
- An overview of the percentage of total spending by disease category for the top 10 diseases and an overview of spending distribution by disease.

The committee received information regarding the feasibility of providing health insurance premium discounts for wellness.

- The federal Health Information Portability and Accountability Act provides an individual may not be denied eligibility for benefits or charged more for coverage because of a health factor.
- The federal Public Health Services Act and federal Employee Retirement Income Security Act provide group health plans and health insurance issuers in the group and individual market are generally prohibited from discriminating against participants, beneficiaries, and individuals when establishing eligibility, benefits, and premiums based on a health factor. An exception to this general prohibition allows premium discounts, rebates, or modification of otherwise applicable cost-sharing in return for adherence to certain programs of health promotion and disease prevention, commonly referred to as wellness programs.

Affordable Care Act Grandfathered Status

A representative of PERS provided the committee a consultant's analysis of the changes that can be made to the grandfathered health plan without causing the plan to lose its grandfathered status under the ACA. The analysis provided:

- All changes are measured against or compared with the terms of the plan in effect on March 23, 2010, the date the ACA was enacted, and all changes to the relevant health plan terms occurring after March 23, 2010, must be aggregated for purposes of determining if a particular change will result in a loss of grandfathered status.
- A health plan will lose its grandfathered status if:

  The health plan eliminates all or substantially all benefits to diagnose or treat a particular condition. This includes eliminating benefits for any necessary element for diagnosing or treating a condition.

  There is any increase to an individual's coinsurance percentage requirement or other percentage cost-sharing requirement measured from March 23, 2010. Other cost-sharing increases may cause a plan to lose grandfathered status if the increase exceeds certain specific thresholds.

    In the case of fixed-amount cost-sharing requirements other than copayments, such as deductibles or out-of-pocket maximums, grandfathered status will be lost if the total percentage increase exceeds the "maximum percentage increase."

    In the case of copayments, grandfathered status will be lost if the total increase in the copayment exceeds the greater of $5, increased by medical inflation, or the "maximum percentage increase."

  The employer's contribution is based on the cost of coverage, and the employer decreases its contribution rate for any tier of coverage for any class of similarly situated individuals by more than 5 percentage points below the contribution rate for the coverage.

  The employer's contribution is based on a formula and the employer decreases its contribution rate for any class of similarly situated individuals by more than 5 percentage points below the contribution rate for the coverage period.

  The health plan did not impose an overall annual or lifetime limit on the dollar value of benefits on March 23, 2010, but subsequently imposes an overall annual limit on the dollar value of benefits.

  The health plan imposed an overall lifetime limit, but no overall annual limit, on the dollar value of benefits on March 23, 2010, and subsequently imposes an overall annual limit at a dollar limit that is below the lifetime limit on March 23, 2010.

  The health plan imposed an overall annual limit on the dollar value of benefits on March 23, 2010, and subsequently decreases the dollar value of the annual limit.
- In addition to the potential consequences for grandfathered status, any changes with respect to overall lifetime or annual limits also must comply with the ACA's new restrictions on such limits. These restrictions apply to all group health plans, including grandfathered plans.
- A health plan also can lose grandfathered status pursuant to certain anti-abuse rules.

The committee received testimony regarding possible pros and cons of keeping or losing the ACA grandfathered status.

- Pros of a health plan losing grandfathered status:

  Expands preventative services which may decrease the cost of a health plan in the long run.

  Allows health plans to shift more cost of the coverage to members.

  Ends the need to monitor compliance of maintaining grandfathered status.

  Increases employee goodwill due to adding preventative services.
- Cons of a health plan losing grandfathered status:

  Prohibits retaining an out-of-plan limit above current ACA limits.

  Requires contraception coverage, regardless of religious objections.

  Prohibits retaining carve out plans for executives.

  A small group is required to comply with the insurance market changes under the ACA, including:

    Essential health benefits;

Cost-sharing limits;

Metallic levels; and

Modified community rating.

The committee compared the services offered in the grandfathered state health plan to the services offered in the nongrandfathered state health plan.

Self-Insurance

The committee considered the pros and cons of staying with the current fully insured health plan versus changing to a self-insured health plan.

The committee received information from a private employer regarding his experience with self-funding and incentives.

The committee considered possible advantages to having a self-insured health plan, including:

- Reduction in taxes;
- Avoidance of ACA fees;
- Reduction in administrative fees due to the elimination of built-in risk charges is possible;
- Benefit of reserves being held by the employer and any investment income generated is retained by the employer;
- Gain flexibility in plan design;
- Benefits from passthrough savings to the employer, such as provider discounts and rebates; and
- Exempt from state health mandates, unless Century Code specifically directs PERS to provide that health mandate.

The committee considered possible disadvantages to having a self-insured health plan, including:

- The employer is at risk for financial losses;
- The employer is liable for incurred but not reported claims on the balance sheet;
- The employer must maintain and fund a reserve account;
- The employer is required to maintain cashflow; and
- The employer is directly responsible for some administrative responsibilities.

The committee was informed although the current public employee health plan is technically a fully insured plan, it is a hybrid fully insured plan. Due to the group's large size, PERS has been able to negotiate a fully insured plan that incorporates many of the advantages of a self-insured plan and avoids many of the disadvantages of a fully insured plan. The plan is modified to allow PERS to share in gains and limited losses. Benefits of the PERS health plan being designed as a hybrid plan include:

Advantages of self-insurance (Disadvantage of being fully-insured)	PERS hybrid fully-insured health plan
Reduction in taxes	Century Code exempts PERS from insurance premium tax
No ACA tax	
Administrative costs and risk	This is offset to a certain extent by having to pay for stop-loss insurance when self-insured
Reserves	PERS gets interest on cash flow as part of the settlement process if the plan has a gain and PERS gets all earnings reserves
Flexibility	PERS determines plan design based upon funding
Passthrough savings	PERS gets savings less than $1.5 million
Mandates	Century Code provides PERS does not have to comply with state health mandates unless specifically addressed

Disadvantages of self-insurance (Advantages of being fully insured)	PERS hybrid fully-insured health plan
Financial risk	PERS health plan limits employer loss to 50 percent of first $6 million or a total of $3 million
Employer must retain incurred but not reported claims	Insurance company is responsible and at risk for incurred but not reported claims
Employer needs a reserve account	Insurance company is responsible for maintaining and at risk for reserve account
Must maintain cashflow	Insurance company is responsible for cashflow
Employer is directly responsible for some administrative responsibilities	Insurance company is directly responsible

The committee was informed if PERS moves from the primary health benefit plan, which is a grandfathered plan, to the PERS nongrandfathered plan, there would be a 3 percent increase in premium. This 3 percent reflects the immediate financial impact of building the wellness provisions into the plan, but does not reflect the anticipated savings in the long term--with the PERS grandfathered plan costing $1,085 and the nongrandfathered plan costing $1,300 per month.

Additionally, the committee was informed if PERS changes to a self-insured plan, unlike most other states, North Dakota does not have an annual budget. With biennial budgets and legislative sessions, there is a greater likelihood PERS would have to appear before the Emergency Commission if costs exceeded the appropriation. The Public Employees Retirement System currently has a 2-year reserve and if that fund is exhausted, there would be financial concerns.

Systemic Changes to the Health Plan

The committee received testimony regarding shifting reimbursement methods from a fee-for-service model to a value-based program model, received testimony regarding patient-centered medical homes, and received testimony regarding coordination of care.

State Employees

A representative of state employees encouraged the committee to consider the impact the health plan has on the ability of the state to recruit employees as well as retain employees. A change in the health plan may impact the decision of some employees who are eligible to retire regarding whether to remain in state employment.

The committee received testimony from a representative of the Human Resources Management Services Division, which provided an overview of state employee data, state employee turnover data, data regarding state employee estimated retirements, temporary and permanent employees' eligibility for health insurance, and a summary of the Hay Group *State Employee Evaluation of Classified Employee Compensation System Fund Report* completed October 2010 and the general follow up performed in 2014.

As of December 2014, the average age of a classified state employee was 46.3 years, average years of services was 12.9, and the average annual salary was $53,297. In 2010 classified employee turnover was 8 percent and it has increased to 12.5 percent in 2015.

The Hay Group report found the state provided a comprehensive and cost-effective benefits program with a competitive health care and retirement program. Although the state's health plan was above market due to it being 100 percent employer funded and having low out-of-pocket contributions, this offset other plan design features that were below market, ultimately putting the health plan at market.

Health Plan Status and Renewal

The committee received periodic updates on the status of the health plan's new carrier's performance and on the status of PERS's activities in reviewing the carrier's performance measures and considering whether to renew the contract or put the contract out for bid.

A representative of PERS provided the following timeline:

- May through August 2016 - Prepare request for proposals in case the decision is to go out to bid;
- July through August 2016 - Conduct renewal estimate;
- August through September 2016 - Receive and consider the proposed renewal and other information required under Section 54-52.1-05;
- September 2016 - If the renewal is not approved, PERS would go to bid immediately with the following timeline:

  September 2016 - Issue request for proposal;

  November 2016 - Receive bids; and

  December 2016 through February 2017 - Review bids; and
- February 2017 - Award plan for 2017-19 biennium.

A representative of PERS reported the contract carrier submitted a proposal for a 17.4 percent increase for the 2017-19 biennium.

	17.4% Increase
2015-17 biennium rate	$1,130.22
2017-19 percent annual trend	8.35%
Projected 2017-19 biennium rate	$1,326.39
2017-19 biennium dollar increase	$196.17
2017-19 biennium percent increase	17.40%
Total state additional funds	$55,658,922
Total additional general fund	$30,612,407
Total current premium	$320,675,060
Total projected premium	$376,333,982

A representative of the carrier, Sanford Health Plan, presented its renewal proposal for the 2017-19 biennium, including alternative options for the health plan, such as:

- Increasing the deductible, decreasing the coinsurance percentage, and increasing the out-of-pocket maximum for out-of-state services.
- Pharmaceutical changes to the plan.
- Increasing office visit and emergency room copayment amounts.
- Increasing the deductible.
- Increasing the coinsurance maximum.

The committee reviewed a bill draft that would have removed the current requirement the state pay the entire premium amount for state employees' health benefit plans. In considering this bill draft the committee received testimony indicating state employees earn 7 to 10 percent less than private sector employees, and the state's benefit package helps overcome this shortfall.

Conclusion

The committee makes no recommendations with respect to this study.

After the committee concluded its work for the interim, the PERS Board announced a temporary suspension of the PERS health plan's wellness program, effective January 1, 2017, due to a recently issued federal Internal Revenue Service memorandum advising cash payments made to employees for gym membership and other cash equivalent incentives for participation in a wellness program are taxable income to the employee. Additionally, after the conclusion of the committee's work, the PERS Board announced its plan to renew the health plan contract with the current carrier and not put the contract out for bid.

HEALTH SERVICES COMMITTEE

The Health Services Committee was assigned the following responsibilities:

1. Senate Concurrent Resolution No. 4004 (2015) provided for a study of dental services in the state, including the effectiveness of case management services and the state infrastructure necessary to cost-effectively use mid-level providers to improve access to services and address dental service provider shortages in underserved areas of the state.
2. House Concurrent Resolution No. 3004 (2015) provided for a study of medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and toxicology, can improve death investigation systems in the state. In addition Section 7 of 2015 House Bill No. 1004 directed the study of the feasibility and desirability of the University of North Dakota (UND) acquiring the building that houses the UND Forensic Pathology Center. These directives were combined into one study.
3. House Concurrent Resolution No. 3049 (2015) provided for a study of issues relating to employment restrictions in public assistance programs.
4. The Legislative Management assigned the committee the responsibility to receive a recommendation from the Insurance Commissioner on an entity to provide a cost-benefit analysis on legislative measures mandating health insurance coverage of services or payment for specified providers of services or amendments that mandate such coverage or payment pursuant to North Dakota Century Code (NDCC) Section 54-03-28.
5. The Legislative Management also assigned the committee the responsibility to receive the following reports from:
   a. The Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, State Board of Psychologist Examiners, State Board of Medical Examiners, and North Dakota Marriage and Family Therapy Licensure Board regarding plans for administration and implementation of licensing and reciprocity standards for licensees and any legislative changes necessary to implement those plans.
   b. The Board of Addiction Counseling Examiners regarding the status of the periodic evaluation of the initial licensure coursework requirements and clinical training requirements.
   c. The State Fire Marshal regarding findings and recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes.
   d. The Department of Human Services (DHS), State Department of Health, Indian Affairs Commission, and Public Employees Retirement System (PERS) before June 1, 2016, on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes.
   e. The State Department of Health before June 1, 2016, regarding progress made toward the recommendations provided in NDCC Section 23-43-04 relating to continuous improvement of quality of care for individuals with stroke and any recommendations for future legislation.
   f. The Tobacco Prevention and Control Advisory Committee and the State Department of Health by September 1, 2016, regarding grant expenditures, the granting process, and reporting requirements of a $500,000 grant provided to the State Department of Health by the advisory committee to assist in funding the department's Centers for Disease Control and Prevention's (CDC) *Best Practices for Comprehensive Tobacco Control Programs - 2014* during the 2015-17 biennium.
   g. The State Department of Health on the status of the health professional assistance program study.

Committee members were Senators Judy Lee (Chairman), Howard C. Anderson, Jr., Tyler Axness, Joan Heckaman, Dave Oehlke, and John M. Warner and Representatives Rich S. Becker, Alan Fehr, Dwight Kiefert, Gail Mooney, Gary Paur, Todd Porter, Karen M. Rohr, Jay Seibel, and Marie Strinden.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

DENTAL SERVICES STUDY

Senate Concurrent Resolution No. 4004 directed the continuation of a study of dental services in the state that began during the 2013-14 interim. The resolution directed a study of dental services in the state, including the effectiveness of case management services and the state infrastructure necessary to cost-effectively use mid-level providers to improve access to services and address dental service provider shortages in underserved areas of the state.

Background

The committee reviewed previous studies and reports relating to access to dental services and ways to address dental service provider shortages, including reports by the 2013-14 interim Health Services Committee regarding its study of how to improve access to dental services and ways to address dental service provider shortages. The committee learned Medicaid dental services totaled $27 million during the 2011-13 biennium, and $28.7 million during the 2013-15 biennium. The 2015 Legislative Assembly appropriated $29.5 million to DHS for Medicaid dental services during the 2015-17 biennium. The committee reviewed proposals considered by the 2013-14 interim Health Services Committee to increase access to dental services, including a proposed case management program in communities with the most need and creating mid-level providers and expanded function dental assistants and dental hygienists to increase access to dental services.

State Dental Care Programs

The committee reviewed the following programs available in the state to provide free or low-cost dental care:

- **Medicaid** - An assistance program for eligible individuals without health insurance or for those whose health insurance does not cover all of their needs. Traditional Medicaid covers an estimated 66,000 individuals in the state, approximately half of which are children. Traditional Medicaid provides dental coverage for qualified adults, including diagnostic, preventative, and restorative dental services, including dentures every 5 years. Medicaid provides limited dental care services, and copayments may apply for certain recipients. Because dental services were not part of the benchmark coverage selected for Medicaid Expansion, dental services are not covered for the approximately 20,000 individuals enrolled under Medicaid Expansion. According to an analysis done by the DHS's contracted actuary, using a similar administrative percentage that Sanford Health Plan receives for expansion, the estimated cost to add dental services to the Medicaid Expansion benefit plan would be between $32.51 and $40.50 per member per month.
- **Healthy Steps** - The state children's health insurance program (CHIP) provides premium-free health coverage to uninsured children in qualifying families. It is intended to help meet the health care needs of children from working families that earn too much to qualify for full Medicaid coverage, but not enough to afford private insurance. Healthy Steps-covered services include dental services; however, copayments are required for certain services.
- **Caring for Children** - A benefit program for eligible North Dakota children up to age 19 who do not qualify for Medicaid or Healthy Steps and have no other insurance. Benefits include primary and preventative medical and dental care.
- **North Dakota Health Tracks** - Formerly early periodic screening diagnosis and treatment, North Dakota Health Tracks is a preventative health program that is free for children aged 0 to 21 who are eligible for Medicaid. North Dakota Health Tracks pays for screenings, diagnosis, and treatment services to help prevent health problems from occurring or help keep health problems from becoming worse. North Dakota Health Tracks also pays for orthodontics.
- **Donated dental services** - Supported by the general fund ($50,000 per biennium), the donated dental services program provides dental care through a network of 135 North Dakota volunteer dentists and 12 dental laboratories to the disabled, elderly, or medically compromised individuals who cannot afford treatment.
- **Smiles for Life fluoride varnish program** - Funded by a DentaQuest Foundation grant, the program provides outreach and training to health care providers in the application of fluoride varnish.
- **School-based fluoride varnish and Seal! ND Dental Sealant Program** - Funded through a CDC oral disease prevention program grant and a federal Health Resources and Services Administration's oral health workforce grant, the Seal! ND Dental Sealant Program is a school-based fluoride varnish and sealant program. Services include an initial screening, sealant placement, and fluoride varnish application. Schools with 45 percent or greater of their students in the free or reduced school lunch program are given priority for the program.
- **Ronald McDonald Care Mobile** - The mobile dental clinic provides services to rural and underserved populations in the western half of the state. The mobile clinic's priorities include schools with 40 percent or greater of their student population in the free or reduced school lunch program, Head Start and Early Head Start, American Indian reservation areas, and community health centers without dental services.

- **Safety net clinics** - Three federally qualified health centers (FQHC) provide dental services in Fargo, Grand Forks, Minot, Rolette, and Turtle Lake. In addition Northland Community Health Center received a New Access Point grant in 2015 to open a medical clinic in Ray and is preparing to open a dental clinic. The clinics serve patients with or without insurance, regardless of their ability to pay, and discounts are offered based on a sliding fee scale to those who qualify. A fourth FQHC, Coal Country Community Health Centers, does not offer dental services, but offers dental vouchers for preventive services for those who are unable to afford services and who qualify for their sliding fee program.

Dental Service Provider Programs

The committee received information regarding the following dental service provider programs:

- **State loan repayment program** - In 2015 Senate Bill No. 2205, the Legislative Assembly included dentists willing to serve in public health and nonprofit dental clinics in the same loan repayment program as dentists serving small communities. The dentists are eligible to receive funds, not to exceed a total of $100,000 per applicant, for the repayment of their educational loans. The funds are payable over a 5-year period ($20,000 per year). Total funding available for the combined dental loan repayment program based on defined need during the 2015-17 biennium is $720,000, of which $360,000 is from the general fund and $360,000 is from the student loan trust fund.
- **Federal/state loan repayment program** - A program providing loan repayment benefits to dentists serving in communities designated as dental health professional shortage areas (HPSA). The program was established through a federal grant from Health Resources and Services Administration (HRSA), is only available in communities designated as dental HPSAs, and requires state matching funds. Successful applicants may receive up to $60,000 to repay educational loans and must agree to a 2-year contract at a site that accepts Medicare and Medicaid assignment and offers a reduced rate or no fee for services.
- **National Health Service Corps loan repayment program** - A federal program providing loan repayment benefits to dental providers serving in communities designated as dental HPSAs. Providers are selected for the program based on the community's HPSA score. Providers receive $50,000 in loan repayment funds for a 2-year commitment. This program does not require matching funds, and providers may receive continuation awards.
- **Nonprofit clinic dental access project** - The Department of Human Services, to increase dental provider access, developed the nonprofit clinic dental access project. The program supports the recruitment of additional dentists willing to serve Medicaid and CHIP patients by assisting dentists with school loan repayment. A part-time dentist may receive up to $10,000 per year for 3 years, or a maximum of $30,000, and the maximum for a full-time dentist is $60,000.

The committee received information from the State Department of Health regarding state loan repayment program application deadlines; review process; penalties; and dentists participating in the loan repayment program from 2005 through 2016, including the dentists' original service location and current location. The number of loan repayment contracts issued each biennium is dependent upon funding. In April 2016 the Health Council approved eight applications based on the availability of funds; however, two dentists declined the contract because of the penalty section. If a dentist does not fulfill the contract, provisions of the loan repayment contract require full repayment of funds received. Of the six dentists granted dental loan repayments in 2015, five are currently enrolled with Medicaid. Of the 37 dentists participating in the state's dental loan repayment program from 2005 through 2016, most are still in their original contract location and six dentists have either withdrawn from the program or live in communities other than the one they served as part of the loan repayment contract.

Dental Health Workforce

The committee learned the UND School of Medicine and Health Sciences (SMHS) conducted research on the health care workforce in the state, including dental providers, and published a report entitled *2010 Snapshot of North Dakota's Health Care Workforce*. The committee learned there were 392 dentists in the state in 2010, and 458 dentists in September 2016, an increase of 16.8 percent. There were also 821 dental assistants and 721 dental hygienists in the state in September 2016. In September 2016 Medicaid had 340 dental providers enrolled in the North Dakota Health Enterprise Medicaid management information system (MMIS).

In 2014, 34 percent of the counties in the state are either fully or partially designated as dental HPSAs, down from 36 percent in 2010. To be designated a dental HPSA, based on reasonable services areas, the population-to-provider ratio must be greater than 5,000 to 1 and contiguous areas are over-utilized, excessively distant, or inaccessible to the population of the area under consideration. A dental HPSA designation is valid for 3 years, and counties are continually reviewed for HPSA status. North Dakota has 55.36 dentists per 100,000 residents compared to the national average of 60.89. While 50 percent of the state's population lives in urban communities, over 60 percent of dental assistants, dental hygienists, and dentists practice in urban areas.

The committee received information from the North Dakota State College of Science regarding the college's role in educating dental professionals in the future. Although there is a need for dental hygienists, the greatest need is for qualified dental assistants, especially in the western part of the state. As a result, the North Dakota State College of Science will seek approval to begin offering the dental assisting program online and through a hybrid delivery system to target students in the western part of the state. There are currently 50 applicants for 20 available dental assisting slots, but when implemented, the hybrid class delivery system will allow the school to increase class size. North Dakota State College of Science has a bachelor's degree articulation agreement with Minnesota State University in Mankato and is developing an articulation agreement with Metropolitan State University, which has a dental therapist program in conjunction with Normandale Community College. The North Dakota State College of Science does not anticipate developing a dental therapy program.

Access to Dental Services

Barriers to accessing oral health care include poverty, geography, workforce, an insufficient number of providers that accept Medicaid patients, lack of oral health education, language, cultural barriers, fear, and age, especially those in nursing homes. A shortage of dentists willing to accept Medicaid patients has resulted in a small number of dentists treating the majority of children on Medicaid and limiting the availability of oral health services even in areas of the state where there is an adequate supply of dental professionals. Additional barriers, particularly in reservation communities, include insufficient federal funding and administrative challenges in clinics. Indian Health Services (IHS) procedures are onerous for volunteers and it can take 6 to 9 months to be authorized to perform services at an IHS clinic. The complex and lengthy federal credentialing process makes it difficult to recruit dentists within the IHS system.

The committee received reports from the North Dakota Center for Rural Health regarding dental services. A 2015 survey of long-term care facilities identified oral health as a priority among participating facilities; however, many facilities had no overall system in place to meet the oral health needs of residents.

Data from the 2015-16 State Department of Health's Basic Screening Survey and the National Youth Risk Behavioral Surveillance System indicates American Indian and lower-income youth in North Dakota are at a greater risk of tooth decay, rampant decay, need for treatment, and need for urgent treatment. The rate of untreated decay in the state is higher for American Indian (51 percent), and other minority children (41 percent) than for their Caucasian peers (24 percent).

The committee learned Medicaid fee-for-service reimbursement in North Dakota as a percentage of private dental benefit plan charges for child dental services is 68 percent, compared to 49 percent nationally. North Dakota has one of the highest Medicaid reimbursement rates in the nation, but only 8 percent of the dental practices billing Medicaid in 2013 provided care to a majority (52 percent) of the Medicaid enrollees accessing dental services. The committee learned the North Dakota Dental Association is encouraging dentists to see additional Medicaid patients and has formed a Medicaid advisory committee to work with DHS to address administrative barriers related to the department's transition to a new MMIS.

The committee learned a survey of hospitals in the state indicated patients may access emergency rooms for toothaches, abscesses, or other dental issues, most of which could have been addressed by a dentist. Common reasons patients seek care in the emergency room include conditions that arise outside of normal dental office hours or on weekends, inability to find a dentist enrolled in Medicaid, or potential access to narcotics. Dental services provided in an emergency room are more costly to the state than if the services were provided in a dental office and most of the patients seeking dental care in emergency rooms were in urban hospitals and either uninsured or covered by Medicaid. Family HealthCare Dental Services in Fargo has an agreement with Sanford Emergency Center to serve any dental pain patients within the next day and the Red River Valley Dental Access Project in Fargo serves as a backup to this coverage with a weekly walk-in clinic for free humanitarian relief of dental pain provided by volunteer dentists. Stakeholders in Bismarck are assessing the level of commitment to a similar diversion program.

The Ronald McDonald House Charities has partnered with the State Department of Health in a program funded by a 3-year HRSA grant. The program will be administered by the Bridging the Dental Gap Dental Director and the Care Mobile Program Manager. The program has contracted a part-time dental hygienist to visit 24 sites to provide preventive services. With the addition of this new program, the Care Mobile anticipates serving approximately 1,400 children in 2016, 400 more than in previous years. The target population is schools where 45 percent or more of the students qualify for free or reduced lunches. Based on 2013 information available from the Department of Public Instruction, 89 schools would qualify for services during the 2014-15 school year.

Proposals to Increase Access

Case Management

The committee learned the North Dakota Dental Association supports Medicaid reimbursement for case management billing codes recently established nationally. The association also suggested current statute and rules be amended to

specifically allow teledentistry and the virtual dental home in outreach settings and allow third-party reimbursement for these services. The case management model would enable registered dental assistants and hygienists to provide oral health assessments, fluoride varnish, sealants, and case management to high-risk patients in community settings. The services would be provided in preschools, elementary schools, medical settings, or long-term care facilities. Dental professionals would identify high-risk patients and link them to a dental home. Case management would include educating individuals, identifying barriers to care, and following up to remove barriers and link the patient to a dental home.

Expanded Function Dental Auxiliary

The committee learned the State Board of Dental Examiners approved amendments to North Dakota Administrative Code Title 20, which became effective April 1, 2015, to reorganize rules related to dental auxiliaries and expand the functions of registered dental assistants and dental hygienists. Expanded function dental auxiliaries must apply for and receive a permit from the State Board of Dental Examiners to perform the expanded duties, but there are currently no programs in the state that meet the training and education requirements necessary to perform the expanded functions.

The committee learned a written collaborative agreement designates authorization for the scope of services provided by a registered dental hygienist working under the general supervision of a dentist. The North Dakota Oral Health Coalition facilitated a collaborative practice discussion between North Dakota dentists, dental hygienists, and other key stakeholders, and provided a summary report to the committee. The North Dakota Collaborative Practice Task Force concluded existing statutory and administrative rules sections related to collaborative practice and supervision should remain. Dental hygienists are currently allowed to provide services without a dentist present under general supervision, allowing them to provide outreach services in public settings, such as schools or nursing homes, under a standing order from a dentist. Except for certain limitations, the dentist is not required to be in the treatment facility. While the State Department of Health and some of the safety net clinics have been successful in working with dentists to write standing orders to allow their employed hygienists to provide outreach services, many hygienists working in private dental offices have been unable to receive support from their supervising dentist. In Minnesota 71 percent of dental assistants and 18 percent of dental hygienists utilize their restorative function permit. The most cited reasons for nonutilization is a lack of delegation by the dentist or the individual's primary focus is dental hygiene.

Support for Safety Net Clinics

The committee learned limited reimbursement for more complex procedures makes those procedures less profitable and unless FQHCs have a number of private pay or insured patients, they provide primarily basic procedures. Because these providers are not practicing to their full scope of practice, turnover rates are high. Securing and retaining dental providers and qualified support staff are the most critical factors in maintaining and expanding dental services at FQHCs. The committee learned continued support of nonprofit safety net clinics through the dental loan repayment program will help recruit dentists who are paid less at the clinics than they could earn in private practice.

Mid-Level Dental Providers

The committee learned in Alaska dental therapists only provide care within the tribal health system, but in Maine, Minnesota, and Vermont, they are allowed to practice anywhere in the state. In Minnesota two models of dental therapy exist to provide specific dental services--the dental therapist and the advanced dental therapist. Dental therapists may educate patients, perform oral examinations and preventative procedures, drill and repair early stages of tooth decay, and assist in other procedures. Permitting dentists to supervise dental therapists while not at the same location allows private practices to offer evening or weekend services for routine care.

The committee learned dental therapists are less expensive to educate because they focus on a limited set of routine dental procedures--approximately 50 to 60 skills--depending on the program, compared to approximately 500 competencies learned by dentists. Additional infrastructure is not needed to employ dental therapists in the state, nor does the state need to establish an educational curriculum to train dental therapists. Programs are available in Minnesota, where the necessary regulations have been established to license dental therapists and the Medicaid agency is able to reimburse dentists for services provided by dental therapists.

The committee received an update on an earlier report on the impact of dental therapists provided to the Minnesota Legislature in 2014. Reimbursement rates for dental therapists in Minnesota are the same as if the dentist would have performed the procedures. This allows dental clinics to charge the same fee for an employee that is paid less than a dentist. Because the reimbursement rates are the same for dentists and dental therapists, there were no immediate savings to the state from the dental therapy model. However, dental therapists have made it possible to expand capacity and have the potential to reduce unnecessary emergency room visits. Minnesota requires all dental therapists to engage in a collaborative management agreement with a dentist and no more than five dental therapists can enter into an agreement with one dentist. Collaborative management agreements must include practice settings and populations served; limitations on services to be provided; age and procedure specific protocols; plans for medical emergencies and quality assurance; and protocols for dental records, medications, complex patients, and referrals. A dental therapist survey performed by the Minnesota Department of Health Office of Rural Health and Primary Care indicated that in

August 2016 there were 64 dental therapists in Minnesota, of which 26 were advanced dental therapists. Dental therapists in Minnesota are required to serve at least 50 percent low-income, uninsured, and underserved patients. Dental therapists are licensed and regulated by the Board of Dentistry in Minnesota and are eligible for loan forgiveness in Minnesota, similar to other health care professionals. The committee received information from various dentists regarding the efficiency and challenges of certain dental therapists in the Minnesota program.

To implement a dental therapy model, the committee learned, the state would need to approve legislation to allow the licensure of advanced practice dental hygienists. The committee reviewed 2015 Senate Bill No. 2354, considered, but not approved, by the 2015 Legislative Assembly. The bill included provisions that would have allowed supervising dentists to limit, through a collaborative management agreement, procedures performed by the dental therapist to those procedures the dentist deemed appropriate.

Other Information and Testimony

The committee received information and testimony from other interested persons, including representatives of the National Academy for State Health Policy, Family HealthCare in Fargo, Community HealthCare Association of the Dakotas, North Dakota Hospital Association, Sanford Health Emergency Department, the Indian Affairs Commissioner, a former Secretary of the United States Department of Health and Human Services, Commission on Dental Accreditation, University of Florida College of Dentistry, Minnesota Department of Health Office of Rural Health and Primary Care, Children's Dental Services in Minnesota, North Dakota Center for Rural Health, North Dakota State College of Science, the North Dakota State Board of Dental Examiners, various dental professionals, professional organizations, community health centers, and other stakeholders. Major comments and information provided include:

- Opportunities to improve access to oral health care for vulnerable populations include augmenting the oral health workforce, building physical and virtual infrastructure to deliver oral health services, and integrating oral health and primary care.
- Federally qualified health centers may provide the infrastructure for dental service providers, including dental therapists and dentists practicing in collaborative or remote supervisory roles. California and Colorado are piloting a virtual dental home model where a network of dental hygienists, supervised by dentists based at FQHCs through telemedicine, are allowed to perform preventative services, screenings, and interim restorations in women, infants, and children clinics; Head Starts; schools; and nursing homes.
- Prior to Medicaid Expansion, qualified refugees could access traditional Medicaid, or they could receive federal refugee medical assistance, which includes adult dental and vision coverage for up to 8 months after they arrive in the United States. Currently a refugee who does not qualify for Medicaid is evaluated for Medicaid Expansion and then refugee medical assistance as a last resort. Medicaid Expansion does not include dental coverage for adults (ages 21 through 65), so as a result those that do not qualify for traditional Medicaid will most likely be without dental and vision coverage, because they typically qualify for Medicaid Expansion.
- Reservations assuming responsibility for dental services through a Public Law 93-638 contract may have more flexibility when hiring dental professionals.
- In February 2016 the Commission on Dental Accreditation adopted the process of accreditation for dental therapy education programs and began accepting applications for accreditation of dental therapy programs. Dental therapy accreditation standards consider institutional effectiveness; educational program; faculty and staff; educational support services; and health, safety, and patient care provisions. Licensing and practice oversight is the responsibility of states and their professional licensing boards.

Recommendation

The committee recommends House Bill No. 1035 to change the dental loan repayment program to provide for a prorated payback of loan repayment funds if a dentist breaches the loan repayment contract.

DEATH INVESTIGATION AND FORENSIC PATHOLOGY CENTER STUDY

House Concurrent Resolution No. 3004 directed the continuation of a study of medicolegal death investigation in the state that began during the 2013-14 interim. The study was to review medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and toxicology, can improve death investigation systems. In addition Section 7 of House Bill No. 1004 directed a study of the feasibility and desirability of UND acquiring the building that houses the UND Forensic Pathology Center. These directives were combined into one study.

Background

1995 Legislative Assembly amended NDCC Chapter 23-01 to allow the State Department of Health to perform autopsies and to employ a State Forensic Examiner to conduct investigations into cause of death. North Dakota Century Code Chapter 11-19.1 requires, under most circumstances, each organized county to have a county coroner. Coroners

are appointed by each county commission and the State Forensic Examiner provides expert consultation. A coroner investigates deaths that are the result of criminal or violent means, such as homicide, suicide, and accident; deaths of individuals who die suddenly when in apparent good health; or deaths of a suspicious or unusual manner. A coroner works closely with law enforcement to determine if a crime may have been committed and provides a medical perspective on the investigation. The coroner, the coroner's medical deputy, the sheriff, or a state's attorney may direct an autopsy be performed. Issues of public health and safety, such as unusual contagious infections or deaths from environmental hazards, may be raised by a coroner or medical examiner. In the absence of a medical professional willing to serve as the county coroner, the duty falls to the sheriff or anyone willing to serve. Coroner candidates must complete 8 hours of training in death investigation offered by the State Forensic Examiner. In January 2016 the duties of county coroner were performed by medical doctors (22 counties), sheriffs or police officers (18 counties), funeral home directors (9 counties), emergency medical technicians (2 counties), one nurse, and one rancher.

The committee reviewed 2013-14 interim Health Services Committee information regarding the system of death investigation, state and county autopsy costs, medicolegal death investigation system funding models, and recommendations for improvements to the medicolegal death investigation system in the state. That committee determined further study was needed regarding:

- Facilities in Bismarck and Grand Forks;
- Education and training of investigators and first responders;
- Financing and cost-sharing;
- National accreditation plan;
- Training and distribution of qualified and certified medicolegal death investigators in all regions of the state; and
- Governance.

State Funding for Death Investigation

The number of autopsies performed by the State Forensic Examiner increased from 196 in 2004 to 367 in 2012. Accreditation standards indicate one forensic examiner should perform 225 to 250 autopsies per year. The number of forensic autopsies performed by the State Forensic Examiner exceeded the number of autopsies recommended by the National Association of Medical Examiners in 2012. In addition to the services provided by the State Forensic Examiner in Bismarck, the 2013 Legislative Assembly provided $480,000 from the general fund to the State Department of Health to contract with University of North Dakota School of Medicine and Health Sciences (SMHS) to perform autopsies in the eastern part of the state during the 2013-15 biennium.

The committee learned three forensic pathologists at SMHS performed autopsies at a morgue facility in Grand Forks during the 2013-15 biennium. The contract provided, beginning September 1, 2013, SMHS serve 13 counties in eastern North Dakota. Beginning July 1, 2014, eight additional counties began receiving services through SMHS for a total of 21 counties. The State Department of Health also contracts with the SMHS to provide services, when necessary due to department workload or vacation, at a rate of $2,000 per case. During the 2013-15 biennium, the State Forensic Examiner performed 552 autopsies, including 17 autopsies performed by SMHS under the contract that provides services while the State Forensic Examiner is away. Expenditures for the State Forensic Examiner were estimated to total $1,432,081 during the 2013-15 biennium, not including expenditures for SMHS eastern counties' contract, or approximately $2,594 per case. Actual expenditures for the UND Forensic Pathology Center during the 2013-15 biennium totaled $1,105,138, including 4.85 full-time equivalent (FTE) positions, of which $459,432 was provided through the State Department of Health contract. The University of North Dakota School of Medicine and Health Sciences performed 448 autopsies during the 2013-15 biennium at a contract cost of $459,432, or $1,025 per case. A combined total of 1,000 autopsies were done by the State Forensic Examiner and SMHS during the 2013-15 biennium. Counties requesting the most autopsies include Cass (174), Grand Forks (124), Burleigh (86), Williams (72), and Ward (63). Of the 53 counties in the state, 25 requested 5 or fewer autopsies.

The 2015 Legislative Assembly provided $480,000 from the general fund to the State Department of Health to contract with SMHS for autopsy services in the eastern part of the state and $160,000 from the general fund to SMHS for Department of Pathology services to provide a total of $640,000 from the general fund, $160,000 more than the 2013-15 biennium. The Legislative Assembly also provided $44,000 of one-time funding from the general fund for digital x-ray equipment for the State Forensic Examiner, and $1,502,924 from the general fund to continue funding for existing forensic examiner staff (3 FTE positions) during the 2015-17 biennium, including bond payments related to the State Department of Health facility in Bismarck.

The University of North Dakota School of Medicine and Health Sciences will continue to serve the 21 eastern counties during the 2015-17 biennium. The Forensic Pathology Center budget for the 2015-17 biennium includes funding for 4.40 FTE positions and totals $1,836,370, of which $160,000 is provided from the general fund directly to SMHS, and

$480,000 is provided through the State Department of Health contract for autopsy services. Remaining funding for the Forensic Pathology Center is provided through other funds, including fees for autopsy services for individuals, hospitals, and other jurisdictions.

The committee learned the Bismarck facility serves 32 counties with 51 percent of the state's population and the Grand Forks facility serves 21 counties with 49 percent of the state's population. While the State Department of Health has one pathologist in Bismarck, the 4,837 square foot facility is able to accommodate two forensic pathologists. The Bismarck facility accepts bodies for autopsy 24-hours per day, 7-days a week, and autopsies are generally conducted the next business day. The Grand Forks facility has 4 forensic pathologists (1.8 FTE positions) and provides services 7 days per week. In addition to autopsy services, the SMHS Forensic Pathology Center serves an educational mission.

The committee learned 235 coroner cases were accepted for autopsy from January through June 2016, of which 118 (50 percent) were accepted by the State Forensic Examiner's office in Bismarck and 117 (50 percent) were accepted by the Department of Pathology at UND.

Forensic Pathology Center

In August 2009 UND entered into a lease agreement with Aurora Medical Park, LLC, Fargo, for a 7,167 square foot building located within the Aurora Medical Center in Grand Forks. The lease agreement, for 120 months, was contingent upon the approval of a change of scope request for a federal HRSA grant which would provide funding for a portion of the total cost of construction. Construction costs totaled $1,944,000, of which $998,645 was paid through the HRSA grant. The remaining cost of $945,355 was the basis for the lease ($94,535 per year or $7,878 per month). Lease costs do not include property taxes or facility-related fees. Subsequent lease amending agreements changed the lease term to 25 years and transferred the landlord's interest to 52nd Avenue Investments, LLC. In addition to the cost of construction, HRSA funds totaling $652,356 were used to purchase major equipment and local funds, available from the Forensic Pathology Center forensic services, totaling $150,000, were used for furnishings, signage, and small office equipment. The Forensic Pathology Center, constructed in 2010, began accepting cases in 2011. Information provided by SMHS indicates, based on an insurance estimate, the current value of the building is $1.5 million. In addition, the Department of Pathology leases 1,870 square feet for office and storage needs.

The Forensic Pathology Center lease payments total $94,535 annually and the term is 25 years, from January 2011 through December 2035. During years 11 through 25 of the lease, the lease price is adjusted by the local consumer price index. The University of North Dakota School of Medicine and Health Sciences is responsible for utilities, maintenance, repairs, fire insurance, and a prorated share of special assessments and the landlord's insurance. Office and storage space lease payments total $24,000 annually and the term is 3 years, expiring January 31, 2019. The committee learned neither lease contains a "buyout" option.

Recommendations for Improvements to the Medicolegal Death Investigation System in the State

The 2013-14 interim Health Services Committee received recommendations from a stakeholder group for improvement to the death investigation system in the state. The 2015-16 interim Health Services Committee received an update on the implementation of these prior recommendations. The committee learned the recommendations have been addressed by the State Department of Health as follows:

- Maintain a manageable workload at the State Forensic Examiner's office in Bismarck - The department continues to contract with SMHS for autopsies in the eastern part of the state during the 2015-17 biennium;
- Provide authority to the State Forensic Examiner to review non-natural deaths and amend the cause and manner of death if necessary - The department reviewed NDCC Section 11-19.1-18 and determined the State Forensic Examiner has the authority to assume jurisdiction over a body and to make changes to the cause and manner of death, if warranted;
- Develop a system to prompt health care providers to consult with the local coroner in all deaths that are not natural deaths - The State Department of Health's Division of Vital Records is developing a change to the electronic death certificate system to remind the provider to consult with the local coroner before certifying a non-natural cause of death;
- Allow copies of toxicology reports generated by the State Crime Laboratory to be sent to the State Forensic Examiner - The State Crime Laboratory has updated their toxicology request forms to include an option for local officials to send a copy of the results to the State Forensic Examiner;
- Increase the number of people in the state trained in death scene investigation - Plans for training the vital records nosologist are ongoing and the UND death investigation course is available online. The State Forensic Examiner offers training; however, additional funding for travel costs related to annual training for coroners, law enforcement, paramedics, and other first responders was not approved by the 2015 Legislative Assembly;

- Develop the capacity of the State Crime Laboratory to produce quantitative toxicology results - Although the State Crime Laboratory does not see quantitative toxicology as a priority currently, the laboratory will work toward offering quantified toxicological testing as staffing and other resources allow;
- Allow the State Forensic Examiner and SMHS Department of Pathology to review death records electronically and allow these entities to send the electronic record to other medical providers for further review or correction - The estimated cost for modifications to the State Department of Health's Division of Vital Records software was between $10,000 and $20,000; however, this funding was not included in the department's 2015-17 biennium budget; and
- Develop a mass fatality response plan for the state - The Emergency Preparedness and Response Section of the State Department of Health is coordinating a review of current mass fatality plans. The department is taking the lead in the planning and coordination for a mass fatality exercise tentatively scheduled for fall 2016.

The committee learned certain cases that should be reported may not be forwarded to county coroners or the state's forensic pathologists. Changes are needed to the process of coroner reporting to align the state's system with more modern systems while maintaining local responsiveness. The committee learned autopsies provide a wealth of health-related data and the committee requested the assistance of the SMHS Advisory Council in the death investigation study regarding how autopsy services relate to population health. The advisory council assigned a subcommittee to study the request and report their findings to the advisory council. The report contained a number of suggestions, but the most significant was that further study of the topic is necessary. The advisory council determined the complexity of death investigation and reporting, including the presence of two major units that oversee death investigations and provide forensic services, made it apparent that specific recommendations would be premature. The advisory council recommended the State Department of Health and SMHS conduct, before the start of the legislative session, a more complete study of death investigation and forensic services in the state and provide recommendations to the 65th Legislative Assembly.

The committee learned the State Forensic Examiner's office reconvened its 2013-14 interim stakeholder group to further develop recommendations for improvement to the death investigation system in the state. The stakeholder group proposed the following:

1. Maintain a manageable workload at the State Forensic Examiner's office in Bismarck by continuing the contractual agreement between the State Department of Health and SMHS.
2. Increase and improve the knowledge and skills of coroners, death investigators, and others who may conduct death investigations or assist in death investigations and increase the number of people in the state who have training in death scene investigation by:
    a. Providing funding for travel costs for coroners or the coroner's designee to attend annual training offered by the State Forensic Examiner ($29,375);
    b. Encouraging medical personnel, law enforcement, and first responders to attend death scene investigation training; and
    c. Providing scholarships to offset travel costs for five county coroners per year or the coroner's designee to attend training provided by the Hennepin County Coroner in Minnesota on death investigation ($10,000).
3. Develop the capacity of the State Crime Laboratory to produce quantitative toxicology results.
4. Allow for electronic review of death records by the State Forensic Examiner and SMHS, including the ability of both agencies to send electronic records to other medical providers for further review or correction.

Other Information and Testimony

The committee received additional information and testimony relating to the death investigation and forensic pathology center study from representatives of the North Dakota Association of Counties, North Dakota Funeral Directors Association, State Department of Health, SMHS Department of Pathology, SMHS Advisory Council, North Dakota University System, county coroners, and other stakeholders. The information and testimony included:

- Counties are supportive of the current regulations related to death investigation and autopsies, including that counties pay transportation costs to either the State Forensic Examiner in Bismarck or the UND Department of Pathology.
- Prior to the addition of service at the UND Department of Pathology, bodies were transported to Bismarck for autopsy, adding time and cost. Funeral directors are supportive of the addition of services at the UND Department of Pathology and support continuing to contract with the UND Department of Pathology for autopsy services.

- In a mass casualty situation, the State Department of Health and the SMHS Department of Pathology facilities can store up to 10 and 30 decedents, respectively. In addition to storage available at the State Department of Health and the SMHS Department of Pathology facilities, 18 facilities reported functioning cold storage for up to 94 decedents for a total capacity of 134 decedents.
- Information regarding the duties and reporting responsibilities of local coroners.
- Drug overdose data is available to the State Department of Health from ambulance information. In addition the department entered into a data use agreement with the Minnesota Hospital Association, which receives hospital discharge data from North Dakota facilities. The department will receive hospital discharge data from 2010 through 2015 for 16 North Dakota facilities (approximately 95 percent of the hospital discharge data available in the state) in an electronic format and will continue receiving the data annually. Health care-related data may assist officials in their discussion of the impact of opioid use and abuse in the state and trends in drug use and abuse.

Recommendation

The committee makes no recommendation related to its study of medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and toxicology, can improve death investigation systems in the state.

The committee makes no recommendation related its study of the feasibility and desirability of UND acquiring the building that houses the UND Forensic Pathology Center.

STUDY OF EMPLOYMENT RESTRICTIONS IN PUBLIC ASSISTANCE PROGRAMS

House Concurrent Resolution No. 3049 directed a study of issues relating to employment restrictions in public assistance programs. Because workforce shortage issues are a major challenge for business development in the state, the study should determine a means to allow employees to work additional hours without automatically losing public assistance benefits.

Background

The committee reviewed a report by the 2007-08 interim Human Services Committee of the temporary assistance for needy families (TANF) program administered by DHS. The 2007-08 interim Human Services Committee learned the TANF program may be used to address areas of worker shortage in North Dakota. Successful welfare-to-work programs emphasize employment and provide a wide range of services that include a strong education and training component. The job opportunities and basic skills (JOBS) program is the employment and training component of the state's TANF program which helps TANF recipients become economically self-sufficient. Through the JOBS program, DHS has the ability to match TANF clients with various career options.

National Conference of State Legislatures

The committee reviewed National Conference of State Legislatures research related to assistance programs. Assistance programs such as the supplemental nutrition assistance program (SNAP), TANF, child care assistance, and some tax credits do not necessarily restrict work, but when income increases beyond the eligibility threshold, participants are no longer eligible for assistance. In some cases, the additional income does not offset the loss of benefits. If a TANF cash grant, lost due to increased hours or income, exceeds the additional earnings, the participant has a decrease in net pay and benefits for the month as a result of accepting additional work hours or a wage increase. This dropoff in benefits that occurs when a person exceeds the income threshold is often referred to as the "cliff effect."

The committee learned the National Conference of State Legislatures has conducted research on the "cliff effect" and outlined strategies states use to address the issue. The focus of the research was on the income eligibility thresholds for various programs, including phase outs, how to define or establish those thresholds based on cost of living and a state definition of "self-sufficiency," and tax credits and other work supports that bridge the gap. Some states have established phase-out or tiered levels of eligibility to allow a person to gradually transition off assistance as their wages increase.

North Dakota Labor Force

The North Dakota labor force consists of all individuals ages 16 years and over who are either employed or unemployed and actively seeking employment. Labor force data does not account for other factors, such as those that are underemployed, students, family caregivers, and the unemployed not seeking work. The labor force participation rate refers to the labor force as a proportion of the entire population ages 16 and over. The unemployment rate refers to the unemployed portion of the labor force as a percentage of the total labor force. In 2014 North Dakota ranked first in the nation for labor force participation with an adjusted rate of 72.8 percent. North Dakota has maintained a very low unemployment rate in recent years. Much like the state's labor force participation, North Dakota's unemployment rate, which has historically outperformed the national average, reached a high in 2009 of 4.1 percent and dropped to 2.8

percent in 2014, the lowest in the nation. According to an annual Job Service North Dakota publication, the top five industries by highest average employment in the state in 2014 were health care and social assistance, retail trade, accommodation and food services, construction, and educational services. Employment in these five industries is also projected to increase more than other industries in the state between 2012 and 2022. Based on a June 2015 monthly Job Service North Dakota report, total employment in North Dakota increased to 470,200, from 468,300 in June 2014. While mining employment decreased, increases in construction, retail trade, and other services more than offset the reduction.

Job Service North Dakota maintains data identifying open and available positions in the state and the *Job Openings Report* is a real-time publication available online. The report includes aggregate job openings, on a monthly basis, for all 53 counties from June 2008. Statewide, Job Service North Dakota provides information by major occupational group by month by planning region. The committee learned in October 2015 there were 16,684 job openings in the state, including jobs related to healthcare (1,749), sales (1,748), administrative support (1,683), and food service (1,367). Earnings data is available by industry, but not by occupation, for individual counties in the Quarterly Census of Employment and Wages program. The *Employment and Wages by Occupation* publication provides wage estimates by occupation and certain geographic areas within the state. Data related to skills, education, and training required for various occupations is available in the *Careers in North Dakota* publication on the Job Service North Dakota website.

Public Assistance Program Eligibility

The committee learned while there are some federal rules that determine who may qualify for TANF-funded cash assistance, states determine the financial eligibility criteria and cash assistance benefit amounts. Income thresholds that determine whether a family is eligible for cash assistance and the benefit amounts paid vary widely among states.

The committee received a summary of income eligibility limits and work requirements for the child care assistance program, low income home energy assistance program (LIHEAP), Medicaid, SNAP, and TANF. The child care assistance program and the LIHEAP programs do not include work requirements. Medicaid provisions do not include work requirements, except for the workers with disabilities coverage group. With some exceptions, the SNAP and TANF programs include certain work requirements. From 2014 to 2015, there was a decline in the number of participants employed in many of the programs.

The committee learned unless determined to be exempt, individuals who receive a TANF cash grant are required to participate in the JOBS program. Exceptions to this requirement include, a caretaker or parent over age 65, a caretaker or parent of a child younger than 4 months of age, and teens who are enrolled in school full-time. Program participants are required to complete a minimum number of hours each week in one or more of the approved work activities, including job readiness, job search, paid employment, high school, general educational development, education directly related to employment, job skills directly related to employment, on-the-job training, vocational training, unpaid work experience, community service, or child care for another participant involved in community service. Involvement in education and training is limited and must be approved by a JOBS program coordinator. Unless responsible for the care of a child who is younger than 6 years of age, participants must complete a minimum average of 30 hours per week in one or more approved work activities. If caring for a child under age 6, an individual must complete a minimum average of 20 hours per week in an approved work activity. The job opportunities and basic skills program offers some supportive services to help participants become self-sufficient, including transportation, child care, job readiness, relocation, and tuition assistance; money for license, certification, and examination fees; tools for employment; and care of incapacitated household members. Some of these supportive services may be provided to former TANF participants for up to 6 months after their TANF case closes in order to help them succeed in the workforce. Individuals who fail or refuse to participate in the JOBS program without a good reason, can be sanctioned.

The committee learned LIHEAP income limits and child care assistance program income limits and copayments are adjusted based on state median income. Supplemental nutrition assistance program, Medicaid, and Healthy Steps income limits are adjusted based on the federal poverty level. The temporary assistance for needy families program is adjusted based on appropriations. The committee learned the state's median income is $55,759 and changes to the benefits of one program may affect the benefits of another program. Public assistance benefits may also be affected by housing assistance and Women, Infants, and Children (WIC) benefits.

The committee learned TANF is the only benefit that would be affected by changes in income on a monthly basis. Many programs are reviewed every 6 months, so benefit changes related to income are not immediate. The supplemental nutrition assistance program benefits are directly affected by TANF benefits, but because SNAP reviews occur every 6 months the effects of TANF benefit changes are not immediate. Child care assistance program benefits are determined based on anticipated monthly income and verified, but are paid based on the actual billing for the prior month.

The committee reviewed information regarding the effect of increased work hours on eligibility for various assistance programs. If a family becomes ineligible for TANF due to an increase in earnings, transition assistance of $200 per month is available for 6 months to offset some of the "cliff effect." Participants receive TANF supports and must continue to comply with TANF requirements during the transition period. There are also consequences in the SNAP program; however, federal regulations determine work requirements. The state's TANF work participation rate for federal fiscal year 2014 of 71 percent exceeds the 50 percent requirement under TANF and ranks second in the nation. Due to high unemployment rates, three reservations in the state are exempt from the lifetime TANF limit; however, they are not exempt from the work requirement.

The committee received a summary of annually updated program limits and an update on the JOBS program, including number of participants, number of hours for various types of work activities, cost, and average number of months individuals participate in the program. The committee learned the number of TANF and JOBS participants decreased from 2,809 in 2014, to 2,583 in 2015, and the average time on assistance increased from 10 to 11 months over the same period.

The committee learned the basic employment skills training program is the employment and training component of SNAP. Because federal funding is limited, the program only operates in Burleigh and Cass Counties. The federal grant is based on the number of mandatory work registrants and able-bodied adults without dependents participating in the program. The Department of Human Services partners with Job Service North Dakota to provide services, including orientation, needs assessments, employment plan development, job search, referrals for other services, and job skills training. Clients are required to participate 20 to 25 hours per week until they find employment, move, or become exempt. Although referred to the basic employment skills training program, the individual may decide not to participate and is disqualified. Individuals can only participate in the SNAP program for 3 out of 36 months unless they are working an average of 20 hours per week.

Child Care Assistance Review

The committee requested DHS review child care subsidies and provide recommendations regarding gradual reductions in benefits to mitigate the "cliff effect" on participants when work hours are increased. The department made no recommendation regarding polices to mitigate the "cliff effect." The committee learned that, due to the 2015-17 general fund budget reductions, effective April 1, 2016, DHS revised the child care sliding fee schedule from 85 percent of state median income to 60 percent of state median income and increased family's monthly copayments. Families eligible for TANF are not subject to the sliding fee schedule and were not affected by the change. The child care assistance program caseload decreased from 2,049 in April 2016, to 1,549 in June 2016.

The committee learned new provisions in the federal Child Care and Development Block Grant Act of 2014 and proposed federal regulations for the block grant include "family friendly" eligibility policies that are likely to address the "cliff effect." Final federal regulations are not available, but the proposed eligibility policies include:

- Establish a 12-month eligibility redetermination period for child care assistance families, regardless of changes in income, as long as income does not exceed the federal maximum of 85 percent of state median income, or temporary changes in participation in work, training, or education activities. The Department of Human Services anticipates implementing this change in October 2016.
- Continue assistance for parents who lose employment for at least 3 months, allowing time to find employment without losing child care assistance program eligibility. The department anticipates implementing this change in October 2016.
- Provide for a graduated phase-out of assistance for families whose income has increased above 60 percent of the state median income at the time of the 12-month review, but remains below the federal maximum of 85 percent of state median income. The provision allows for an additional 12 months of eligibility, thereby preventing the "cliff effect." Due to the complexity of the provision, the current system cannot accommodate the programming, so the department estimates this change will not be implemented until August 2017.

Other Information and Testimony

The committee received other information and testimony from representatives of DHS and other stakeholders. Key comments and information include:

- In August 2014 electronic benefit transfer (EBT) retailers were required to pay for their EBT equipment and supplies. There were 475 participating EBT retailers in the state in November 2014 and the average number of participating retailers from July 31, 2014, through July 31, 2015, was 459.
- Research on the "cliff effect" done by The Women's Foundation of Colorado, the Women and Family Action Network Coalition, and the Indiana Institute for Working Families, included changes enacted to allow for a phasing out of benefits as income increases, and recommendations to smooth out benefit phaseouts, implement broad-based categorical eligibility, change monthly income eligibility limits, and raise the income tax threshold for state income tax.

- Recommendations of the National Commission on Hunger to Congress and the Secretary of the United States Department of Agriculture include establishing a mechanism for cross-agency collaboration to facilitate improved public assistance programming and evaluation through enhanced technology, data sharing, and coordinated funding streams that protect effective programs and encourage coordinated efforts to address larger issues of poverty.

Recommendation

The committee makes no recommendation as a result of its study of issues relating to employment restrictions in public assistance programs.

REPORTS OF BEHAVIORAL HEALTH-RELATED BOARDS

The committee was assigned to receive the following behavioral health-related reports:

- A report from the Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, State Board of Psychologist Examiners, State Board of Medical Examiners, and North Dakota Marriage and Family Therapy Licensure Board regarding plans for administration and implementation of licensing and reciprocity standards for licensees and any legislative changes necessary to implement those plans (Section 1 of 2015 House Bill No. 1048).
- A report from the Board of Addiction Counseling Examiners regarding the status of the periodic evaluation of the initial licensure coursework requirements and clinical training requirements (Section 4 of 2015 House Bill No. 1049).

Background

The committee reviewed the 2013-14 interim Human Services Committee report on a study of behavioral health needs pursuant to Section 1 of 2013 Senate Bill No. 2243. The 2013-14 interim Human Services Committee received a summary of the licensing requirements for various behavioral health-related professions. The 2013-14 interim committee received a number of recommendations relating to behavioral health professional workforce and training including:

1. Expand the behavioral health workforce by improving oversight for licensing issues and concerns and increasing the use of lay persons to expand treatment options.
2. Establish professional licensing board standards to allow:
   a. One year of practice if licensed in another state;
   b. A process for meeting North Dakota licensing standards during the 1-year period;
   c. Reciprocity of licenses between Montana, South Dakota, and Minnesota; and
   d. A method for issuing licenses within 30 days.
3. Expand the number of licensed addiction counselors by establishing a stipend program for licensed addiction counseling interns that would be forgiven if the licensed addiction counselor practices in the state for 4 years.
4. Expand the number of licensed addiction counselor training slots by providing stipends for organizations that offer the training.
5. Establish a student loan buydown program for licensed behavioral health clinical staff.

Report Pursuant to House Bill No. 1048

The committee received a consolidated report from the Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, North Dakota Marriage and Family Therapy Licensure Board, State Board of Psychologist Examiners, and the North Dakota Board of Medicine. The boards agree that North Dakota should match national standards to allow for professional mobility and that minimal statutory changes would be needed to align state standards with national occupation-specific standards. The boards reported workforce-related issues are not due to regulatory barriers or board inefficiencies and the boards have no authority over employment standards or insurance reimbursement requirements. The boards made the following recommendations:

- Require North Dakota employers and insurance carriers to use North Dakota occupational licensing standards when setting employee requirements;
- Maintain autonomous boards with North Dakota standards mapped to national occupational standards;
- Adopt an expedited licensure model for mobility and portability of licensure;
- Appropriate funds to the Governor's office to expand operational efficiencies for smaller boards;

- Appropriate funds to the Governor's office for the designated purpose of annual meetings of all regulatory board chairs and board managers;
- Require background checks for all new issue licenses;
- Standardize continuing education reporting and renewal processes;
- Develop a mechanism to share disciplinary action between North Dakota boards and the public;
- Develop consistent telepractice laws and rules across all behavioral health boards; and
- Provide for consistency in statutory language for all licensing professions by using model language to promote consistent format, mechanism, procedures, and issuance of licenses.

The committee learned 25 percent of the 49 states contacted by the Board of Counselor Examiners regarding reciprocity agreements responded. The committee learned none were willing to enter into a reciprocity agreement with North Dakota. While some of North Dakota's requirements are more strict than other states, others are not. No states were willing to alter their requirements for reciprocity. The committee learned nationwide, education standards have been increasing.

Report Pursuant to House Bill No. 1049

The committee received a report from the Board of Addiction Counseling Examiners. The board provided a summary of recent changes, including the addition of a new training consortium, regular review of licensure requirements, streamlined applications, flexible consortium training start dates, and collaboration to allow for a national certification in addiction counseling. The board is also proposing changes related to tiered licensure levels, academic requirements, clinical training, and reciprocity. The board is proposing a four-tier system of certification and the "career ladder" would allow the board to provide out-of-state professionals credentialing while they complete their academic and clinical training requirements. The board is also proposing to remove certain academic requirements, the completion of which is implied by other coursework. Regarding clinical training, the board reviewed requirements in surrounding states and is proposing a reduction in clinical training hours. The committee learned there is value in the consortium, but the board is also proposing an individualized training plan at the universities, if a consortium is not possible for an individual. The board is also proposing changes to reciprocity rules, including plans to prorate clinical hours for reciprocity.

The committee reviewed the clinical supervision requirements of the three levels of licensure available through the Board of Counselor Examiners. If licensed professional counselors (LPCs) or licensed professional clinical counselors (LPCCs) are not available to supervise licensed associate professional counselors and LPCs, licensees are unable to advance their credentials. Only individuals with LPCC licensure are reimbursable by third-party insurers. The committee learned there are 18 LPCs and 65 LPCCs in the state and most novice counselors seek supervision from LPCCs because it shortens the licensure process. A licensed associate professional counselor who obtains a counseling position at an agency, which does not employ an LPC or LPCC supervisor must secure third-party supervision at an additional cost of $5,000 to $10,000. North Dakota is 1 of 13 states that either require a professional counselor, pursuing licensure, to obtain supervision by a more advanced professional counselor, or do not explicitly state supervisor requirements. Remaining states allow affiliated licensed mental health professionals to provide supervision to novice counselors, seeking more advanced licensure. Potential supervisors include psychologists, psychiatrists, addiction counselors, social workers, and marriage and family therapists. The committee learned novice counselors would seek employment in agencies that could provide supervision by an affiliated mental health professional, reducing the need to pay for supervision and some of these agencies could be in rural communities.

Other Information and Testimony

The committee received additional information and testimony from representatives of the State Board of Medicine, North Dakota Medical Association, The Council of State Governments National Center for Interstate Compacts, Education Standards and Practices Board, University System, North Dakota Nurses Association, Department of Corrections and Rehabilitation, DHS, Mental Health America of North Dakota, Heartview Foundation, Western Area Health Education Center, SHMS, UND School of Law, counselors, behavioral health educators, and various other stakeholders relating to its review of reports received from the behavioral health-related boards, including:

- An interstate medical licensure compact may make it easier for physicians to gain licensure in multiple states.
- The Council of State Governments National Center for Interstate Compacts has facilitated collaborative agreements between state governments, federal agencies, and the private sector regarding a variety of issues. Initiatives in license portability and reciprocity have resulted in compacts for the licensure of physicians, nurses, emergency medical services personnel, psychology, and physical therapy.
- The Education Standards and Practices Board is the licensing agency for counselors and psychologists providing services in schools. Both licenses fall into the "restricted license" category, indicating a specialization rather than

a regular professional education core. School social workers are licensed by an external board and credentialed by the Department of Public Instruction.

- The University System provided information regarding the number of internships available to behavioral health-related students and graduates and plans to update a 2007 report on the status of the behavioral health workforce in the state.
- Of the 13,000 registered nurses in the state, 3 percent are working in behavioral health, yet behavioral health nurses make up the largest portion of the professional workforce for acute inpatient psychiatric services. The North Dakota Nurses Association recommends establishing a plan to provide financial support for the education and training of behavioral health nurses, increasing incentives for the retention of new nursing graduates in the state, and offering incentives for faculty in the psychiatric and mental health nurse practitioner program.
- Information regarding a comparison of the referral requirements for Medicaid reimbursement of the various behavioral health professions, including information regarding the length of time services may be reimbursed for various behavioral health professionals.
- Difficulties encountered by licensed professional clinical counselors moving to North Dakota from other states.
- Dual licensure is a burden to the counselors and agencies and has made addiction counseling less attractive as a profession. Any person practicing addiction counseling in the state is required to be licensed by the Board of Addiction Counseling Examiners and licensed addiction counselors providing addiction counseling or addiction treatment services are also required to have a program license issued by DHS.
- The Mental Health America of North Dakota recently received a targeted technical assistance grant to develop peer-support specialist training curriculum and standards of practice for peer-support specialists. Certification will require an 80-hour course and passing a final examination.
- A plan for Area Health Educational Centers to administer behavioral health and other internships and proposed funding for health care internships in the state.
- Collaboration between SMHS and the UND School of Law to provide behavioral health experiences for health sciences and law school students.
- A proposal for a behavioral health and addiction in North Dakota program which is an interprofessional, collaborative, and team-based approach to providing behavioral health services from a central office.

The committee considered, but did not recommend, a bill draft to remove the matching funds requirement for behavioral health professionals in the loan repayment program.

Recommendation

The committee recommends Senate Bill No. 2033 to provide for clinical supervision of behavioral health professionals by behavioral health professionals outside of their respective professions and to provide for a report to the Legislative Management.

MANDATED HEALTH INSURANCE COVERAGE COST-BENEFIT ANALYSIS

North Dakota Century Code Section 54-03-28 provides a legislative measure mandating health insurance coverage may not be acted on by any committee of the Legislative Assembly unless accompanied by a cost-benefit analysis. The committee was assigned the responsibility of recommending a private entity, after receiving recommendations from the Insurance Commissioner, for the Legislative Council to contract with to perform the cost-benefit analysis for the 2017 legislative session. The Insurance Commissioner must pay the costs of the contracted services, and each cost-benefit analysis must include:

1. The extent to which the proposed mandate would increase or decrease the cost of services.
2. The extent to which the proposed mandate would increase the use of services.
3. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premium and administrative expenses of the insured.
4. The impact of the proposed mandate on the total cost of health care.

North Dakota Century Code Section 54-03-28 provides any legislative measure mandating health insurance coverage may only be effective for the next biennium and is limited to the public employees health insurance program. For the subsequent Legislative Assembly, PERS must prepare and request introduction of a bill to repeal the expiration date and expand the mandated coverage to all accident and health insurance policies. In addition PERS is required to prepare a report which is attached to the bill regarding the effect of the mandated coverage or payment on the system's health insurance program. The Public Employees Retirement System must include information on the utilization and costs

relating to the mandated coverage and a recommendation on whether the coverage should continue. The 2009-10 interim Health and Human Services Committee learned PERS is not required to use a consultant when evaluating legislative measures mandating health insurance coverage. However, if a future analysis does require additional resources, NDCC Section 54-52.1-06.1 provides a continuing appropriation to PERS for consulting services related to the uniform group insurance program.

The Insurance Commissioner has budgeted $15,000 to pay the costs of the contracted services for the 2017 legislative session, $5,000 less than the amount provided for the 2015 legislative session.

Health Insurance Mandate Analysis Costs

The committee received information regarding recent costs incurred by the Insurance Department for health mandate-related cost-benefit analyses. During the 2007 legislative session, there were no health insurance mandates referred for cost-benefit analysis. The Insurance Department paid a total of $28,070 to Milliman USA for analyses of three bills during the 2009 legislative session, and $14,982 to Milliman USA for analysis of one bill during the 2011 legislative session. There were no health insurance mandates referred for cost-benefit analysis during the 2013 legislative session. During the 2015 legislative session, the Insurance Department paid a total of $26,564 to Milliman USA for analyses conducted on three bills.

Legislative Rules Regarding Bills That Include Health Insurance Mandates

Beginning with the 2009 legislative session, the House changed House Rule 402 relating to bill introduction deadlines for measures subject to cost-benefit analysis under NDCC Section 54-03-28. The rule, as changed, provides a current legislator may submit a mandated health insurance bill to the Employee Benefits Programs Committee no later than April 1 of the year before a regular legislative session. Any new legislator taking office after November 30 of the year preceding the legislative session may submit a mandated health insurance bill for consideration by the Employee Benefits Programs Committee no later than the first Wednesday following adjournment of the organizational session. The Senate has not yet adopted this change relating to mandated health insurance bills.

Insurance Commissioner Recommendation

The Insurance Commissioner solicited proposals through an informal solicitation from 165 potential vendors for the cost of performing health insurance mandate cost-benefit analyses. Proposals, received from Milliman, Inc. and Acumen Actuarial LLC, were evaluated 60 percent on bidder qualifications and 40 percent on cost. The Insurance Commissioner recommended, based on the proposal received, the Legislative Council contract with Acumen Actuarial LLC to perform the cost-benefit analyses during the 65th Legislative Assembly.

Recommendation

The committee recommends the Legislative Council contract with Acumen Actuarial LLC, for cost-benefit analyses of legislative measures considered by the 65th Legislative Assembly mandating health insurance coverage pursuant to NDCC Section 54-03-28.

STATE FIRE MARSHAL REPORT

The 2009 Legislative Assembly approved House Bill No. 1368, which created NDCC Chapter 18-13 relating to reduced ignition propensity standards for cigarettes and penalties for wholesale and retail sale of cigarettes that violate the reduced propensity standards. North Dakota Century Code Section 18-13-02(6) requires the State Fire Marshal to review the effectiveness of test methods and performance standards and report each interim to the Legislative Council the State Fire Marshal's findings and any recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes. The committee was assigned the responsibility to receive this report.

The chapter provides for enforcement of the standards by the State Fire Marshal, Tax Commissioner, and Attorney General and for monetary violations to be deposited in the fire prevention and public safety fund to be used by the State Fire Marshal to support fire safety and prevention programs. No funds were deposited into the fire prevention and public safety fund during the 2013-15 biennium, and there was no balance in the fund as of June 30, 2015. In addition fees collected for testing cigarettes are to be used by the State Fire Marshal for the purpose of processing, testing, enforcement, and oversight of ignition propensity standards. Cigarette manufacturers are required to pay the State Fire Marshal an initial $250 fee for certification, which is deposited in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund. The committee learned deposits into the fund are estimated to total $85,000 during the 2013-15 biennium and expenditures are estimated to total $19,881. The balance in the Reduced Cigarette Ignition Propensity and Firefighter Protection Act enforcement fund was estimated to be $379,079 as of June 30, 2015.

The committee received a report from the State Fire Marshal, including a summary of test methods, performance standards, and certification results. According to the data collected from North Dakota's National Fire Incident Reporting System from January 2014 to September 2016, 147 fires within the state were caused by smokers, placing smoking as the sixth leading cause of fires in the state. There were 1,659 man hours invested in extinguishing these fires. From

2004 to 2013, North Dakota reduced its ranking from 6th to 26th for the greatest number of fire deaths. There are 27 different manufacturers that certify cigarettes and 14 different laboratories that test these cigarettes. The committee learned, as of January 1, 2016, there have been 692 cigarettes certified, which raised $173,000. The State Fire Marshal made no recommendation regarding changes to NDCC Chapter 18-13.

REPORT ON PLANS TO REDUCE THE INCIDENCE OF DIABETES IN THE STATE, IMPROVE DIABETES CARE, AND CONTROL COMPLICATIONS ASSOCIATED WITH DIABETES

House Bill No. 1443 (2013) requires DHS, the State Department of Health, the Indian Affairs Commission, and PERS to collaborate to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes. Section 1 of the bill requires before June 1 of each even-numbered year, DHS, the State Department of Health, the Indian Affairs Commission, and PERS submit a report to the Legislative Management on the following:

1. The financial impact and effect diabetes is having on the agency, the state, and localities.
2. An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease.
3. A description of the level of coordination existing between the agencies on activities; programmatic activities; and messaging on managing, treating, or preventing diabetes and diabetes complications.
4. The development or revision of detailed action plans for battling diabetes with a range of actionable items for consideration by the Legislative Assembly.
5. The development of a detailed budget blueprint identifying needs, costs, and resources required to implement the plan identified in item 4.

The committee was assigned the responsibility to receive this report.

The committee received the report from DHS, the State Department of Health, the Indian Affairs Commission, and PERS. The committee learned agency representatives shared information and examined data on the prevalence of diabetes and its financial impact. Agencies reviewed the status and benefits of current diabetes-related programs, funding, and collaborative efforts among agencies. Agencies identified action plans and recommendations to improve health outcomes in the state related to diabetes. The committee learned type 2 diabetes can be prevented with behavior changes at the individual level and at the population level. Agencies must collaborate to enact and support policies that make the healthy choice the default choice. The committee learned those living with diabetes need policies that support the proper care and management of the disease in order to prevent costly complications and to improve the quality of life. The committee learned 49,000 adults in the state have diabetes and 202,000 have prediabetes. The committee received a summary of current efforts to address diabetes in the state including programs provided through the State Department of Health, DHS, and PERS. The report contains a number of goals and strategies to reduce diabetes in the state, including:

- Improve access to the diabetes prevention program by increasing the number of sites where the program can be administered, personal awareness of prediabetes risk factors and self-referral to the program, medical provider referral to the program, and training opportunities for lifestyle coaches;
- Improve the quality of life for those with diabetes by promoting the use of accredited diabetes self-management education programs and offering continuing education for health professionals; and
- Leverage chronic disease initiatives through partnerships and coalition building by promoting collaboration among state agencies and with those working to prevent chronic diseases in the community.

REPORTS ON THE STATE DEPARTMENT OF HEALTH HEALTH PROFESSIONAL ASSISTANCE PROGRAM STUDY

House Bill No. 1036 (2015) requires the State Department of Health evaluate state programs to assist health professionals, including behavioral health professionals, with a focus on state loan repayment programs for health professionals. The study must include:

1. Identification of state programs to assist health professionals;
2. Consideration of whether elements of the identified state programs could be standardized;
3. Evaluation of funding and usage of the identified state programs;
4. Evaluation of the effectiveness of these identified programs and how these programs could be revised to be more effective; and

5. Consideration of whether there are gaps or duplication in programs designed to assist health professionals.

Section 1 of House Bill No. 1036 requires, during the 2015-16 interim, the State Department of Health make periodic reports to the Legislative Management on the status of the study. In addition, before July 1, 2016, the department must report to the Legislative Management on the outcome of the study, including presentation of recommended legislation. The Legislative Management may introduce legislation recommended by the department as part of the department's study report. The committee was assigned the responsibility to receive these reports.

The committee received a report from the State Department of Health. The committee learned after House Bill No. 1036 was approved, existing loan repayment programs were revised and combined into the two new loan repayment programs--the dentists loan repayment program, which combined three prior dental programs, and the health care professional student loan repayment program, which replaced two prior programs. The health care professional student loan repayment program assists physicians and mid-level practitioners, as well as behavioral health practitioners. The new programs assist health care professionals by repaying student loans of licensed, practicing professionals who provide health care to underserved areas or populations. In addition to the dentists loan repayment program and the health care professional student loan repayment program, the study identified four state programs relating to health professional financial assistance:

- Department of Commerce workforce development program, which awards a grant to provide a program encouraging youth to consider health professions;
- Bank of North Dakota addiction counselor internship loan program;
- Professional student exchange program, which subsidizes out-of-state tuition for professional programs not available in North Dakota; and
- Department of Human Services nonprofit clinic dental access project, which grants funds to a nonprofit clinic for the purpose of assisting in the repayment of dental providers' student loans.

The committee learned while the programs are similar, differences include the amount and timing of award payments, the description of priority and preference in applicant criteria, community match requirements, years of service obligations, and penalties for failing to fulfill the contract. If criteria were standardized, the two loan repayment programs could be simplified and combined into a single state loan repayment program, which would save administrative time and costs, and provide continuity between assistance programs. The two loan repayment programs were funded at a similar level during the 2015-17 biennium--$720,000 for the dentists loan repayment program and $698,800 for the health care professional student loan repayment program. Because nearly all of the loan repayment slots are filled each year, the programs have been successful in bringing health care and dental professionals to underserved communities. Since 1993, 89.5 percent of program participants fulfilled their contracts. The percent of program participants remaining in underserved communities after their contract has been fulfilled varies by provider and length of time since the end of the contract. For those whose contract ended 5 or less years ago, the retention rate was 76.5 percent for physicians, 60 percent for mid-level providers, and 58.3 percent for dentists. For those whose contract ended more than 5 years ago, the retention rate was 45 percent for physicians, 92.3 percent for mid-level providers, and 47.4 percent for dentists. Overall, 61.6 percent of participants have remained in an underserved area.

The committee learned the loan repayment programs would be more effective if additional funding were made available to increase the number of slots available for underserved communities. Increased communication, encouragement, and support to providers and their families would encourage more providers to continue to practice in underserved areas. The only gap noted in the study was that some health care professions are not eligible for the loan repayment program. There is interest in including optometry, pharmacy, chiropractic, and registered nursing programs to the health care professionals receiving loan repayment benefits. Other states in the region include nursing instructors; dental hygienists; marriage and family therapists; heath care social workers; medical and laboratory technicians; physical, occupational, speech, and respiratory therapists; dieticians; and paramedics in their assistance programs. Except for the DHS's nonprofit dental access grants project that is somewhat similar to the State Department of Health's dentist loan repayment program, the study did not identify any other duplications between state programs. The State Department of Health recommended combining the dentists loan repayment program and the health care professional student loan repayment program into a single loan repayment program, standardizing program terms, and expanding the program to include other health care professions. The committee did not make any recommendations resulting from receiving this report.

REPORT ON THE CONTINUOUS IMPROVEMENT OF QUALITY OF CARE FOR INDIVIDUALS WITH STROKE

House Bill No. 1323 (2015) relates to the creation and implementation of a stroke system and provides for a report to the Legislative Management. The bill amended NDCC Section 23-43-04 to provide the State Department of Health

establish and implement a plan for achieving continuous quality improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment, establish a data oversight process, and implement a plan for achieving continuous quality improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment. North Dakota Century Code Section 23-43-04(4) requires before June 1 of each even-numbered year, the department provide a report to the Legislative Management regarding progress made toward the recommendations provided in NDCC Section 23-43-04 and any recommendations for future legislation. The committee was assigned the responsibility to receive this report.

The committee received a report from the State Department of Health and learned the North Dakota stroke system was created in 2009 to establish a comprehensive, coordinated, efficient system, along the continuum of health care for individuals suffering a stroke. The program is administered by the Division of Emergency Medical Systems and stroke partners, including the American Heart Association, critical access hospitals, tertiary hospitals, the North Dakota Emergency Medical Services Association, and the State Department of Health's Division of Chronic Disease. The committee received a summary of responsibilities assigned to the State Department of Health in NDCC Section 23-43-04 and the department's activities related to its responsibilities and the continuous improvement of quality of care for individuals with stroke. The committee learned there are 24 critical access hospitals and 6 tertiary hospitals in the stroke registry and others are expected to join. Data is shared at quarterly stroke task force meetings and at regional critical access hospital quality meetings where it is used by the stroke task force to make recommendations for interventions to improve stroke care delivery in the state. Improvements in the stroke system include:

- All six tertiary hospitals in the state are now primary stroke centers;
- 22 of 36 critical access hospitals are designated as acute stroke ready hospitals;
- The Division of Emergency Medical Systems has contracted with the North Dakota Emergency Medical Services Association to offer stroke education to all North Dakota emergency medical services providers;
- The Division of Emergency Medical Systems collaborates with primary stroke center coordinators to provide education to critical access hospitals;
- Each emergency medical services provider will soon be required to submit detailed stroke transport plans;
- The stroke protocols will address the transport of acute stroke patients to the nearest stroke-designated hospital within a specific time of onset of symptoms; and
- Last year the Division of Emergency Medical Systems created a stroke campaign, and materials from the campaign continue to be used in public education efforts across the state.

The committee learned in 2010 emergency medical services providers gave advanced notification to the destination hospital of a potential stroke patient being transported from the scene in only 56 percent of cases. In 2015, hospitals received advance notification 77.4 percent of the time compared to 55.9 percent nationally. The percentage of acute ischemic stroke patients who arrived at the hospital within 2 hours of the time the patient was last known to be without the signs and symptoms of the current stroke, and for whom intravenous thrombolytic therapy was initiated within 3 hours of the time the patient was at his or her prior baseline, increased from 30.9 percent of patients that qualified in 2010, to 80 percent of eligible patients in 2015. The State Department of Health made no recommendation regarding future legislation.

REPORTS ON THE TOBACCO PREVENTION AND CONTROL ADVISORY COMMITTEE GRANT TO THE STATE DEPARTMENT OF HEALTH

House Bill No. 1024 (2015) included $500,000 from the tobacco prevention and control trust fund for a grant to the State Department of Health to be used for the CDC's *Best Practices for Comprehensive Tobacco Control Programs - 2014* during the 2015-17 biennium. Section 2 of the bill requires the Tobacco Prevention and Control Advisory Committee and the State Department of Health to report to the Legislative Management by September 1, 2016, regarding grant expenditures, the granting process, and reporting requirements of the grant. The committee was assigned the responsibility to receive this report.

The 2015 Legislative Assembly, in House Bill No. 1004, provided a total tobacco prevention appropriation of $6,910,177 to the State Department of Health, of which $3,440,864 is from the community health trust fund, $2,969,313 is from federal funds, and $500,000 is from a grant provided by the Tobacco Prevention and Control Advisory Committee from the tobacco prevention and control trust fund. Funding from the community health trust fund provides for community health tobacco programs, the Tobacco Quitline, and a tobacco prevention coordinator. Certain tobacco-related programs currently provided through the State Department of Health qualify as best practices as outlined by CDC. As a result, the funding for the Tobacco Prevention and Control Executive Committee is adjusted accordingly. The committee learned the State Department of Health was notified in March 2015 that funding for tobacco prevention and control activities provided by CDC would be reduced by approximately $500,000 for the 2015-17 biennium. Because the State

Department of Health anticipated reductions in federal funding available for tobacco prevention and control, the Legislative Assembly increased 2015-17 biennium authority for the Tobacco Prevention and Control Executive Committee and the department to provide for a $500,000 grant from the tobacco prevention and control trust fund to the department.

The committee received reports from Center for Tobacco Prevention and Control Policy and the State Department of Health. Because promotion of NDQuits is included in both the department's and the advisory committee's work plan activities, the department used the funds to support advertising for NDQuits, the state's phone- and web-based quit services. The advisory committee provided a media plan that would meet its requirements for CDC *Best Practices for Comprehensive Tobacco Control Programs - 2014* and the department contracted with Odney Advertising to implement the media plan. The committee learned the $500,000 grant was provided for the period beginning July 24, 2015, and ending June 30, 2016. The department reported quarterly to the advisory committee, completed the grant project, and billed quarterly for the entire $500,000 contract. The committee learned from January through March 2016, compared to the same period in the previous year, telephone enrollments in NDQuits increased 100 percent, while web enrollments increased 13 percent.

OTHER INFORMATION RECEIVED

Health Care Workforce

The committee received a report from a health care workforce task force. The task force identified the following three goals:

- Explore the possibility of new Americans filling workforce needs in health care;
- Explore strategies to recruit health care providers in rural communities by providing more internships and preceptorships in rural health care facilities; and
- Develop more collaborative efforts to fill all of the slots available in nursing programs across the state and to provide nonaccepted applicants guidance in developing a health care career path.

The committee received information from the North Dakota Center for Nursing regarding nursing workforce capacity, including behavioral health nurses, nursing faculty recruitment and retention, and the need for advanced practice registered nurse preceptors. There are more applicants for the state's nursing programs than slots available. One of the barriers to expanding nursing programs is the lack of qualified faculty. Other advance degree career options are often considered more attractive and lucrative. The state's nursing programs have faculty positions they have been unable to fill or have filled with unqualified faculty working toward a master's degree.

The committee received information and testimony relating to the nursing work force from the UND College of Nursing, North Dakota State University School of Nursing, North Dakota Nurses Association, College and University Nursing Education Administrators, and American Association of Nurse Practitioners. The committee learned stakeholders recommend increasing funding for the health professional loan repayment program, adjustments to the program to remove the matching funds requirement, and including registered nurses and licensed practical nurses to the those eligible for loan repayment. Other recommendations include a new nursing faculty loan forgiveness program for nursing education program faculty to obtain master's and doctorate degrees while serving as faculty, an income tax credit of $1,000 for each clinical rotation of at least 160 hours for advanced practice registered nurses that serve as a preceptor, and adding advanced practice registered nurses to those authorized to order detoxification holds.

The committee considered, but did not recommend, a bill draft to provide for an income tax credit for advanced practice registered nurse preceptors.

Recommendation

The committee recommends Senate Bill No. 2034 to establish a loan forgiveness program for nursing faculty.

University of North Dakota School of Medicine and Health Sciences -
Health Issues for the State of North Dakota 2015

The committee received a report from the Center for Rural Health at SMHS entitled *Health Issues for the State of North Dakota 2015*, including an update on the construction of the new SMHS building. The biennial report includes information regarding the state's population, health care needs, physician and other health care workforce, health care infrastructure, quality and value of health care, workforce development, and recommendations for health care planning in the state. The Center for Rural Health will update the information and issue the fourth biennial report in December 2016, which will include information on dental workforce and oral health. The committee learned 13 counties in the state do not have a physician and 7 counties have one physician providing care for between 3,500 to 10,000 people. The ratio of physicians to 10,000 population is 24.1 in North Dakota, compared to 25.1 in the Midwest, and 27 nationally. The School of Medicine and Health Sciences has increased the medical school class size by 16 students per year, the

number of residencies by 17 per year, and the number of other health sciences students by 15 percent. The School of Medicine and Health Sciences has also revised the medical school admissions process to admit students more likely to stay in the state. The new SMHS building will total 325,446 square feet, is on budget and opened on time in the summer of 2016. There will be approximately 78 doctors graduating from SMHS in 2020 and historically approximately 45 percent stay in the state. Between 1984 and 2014, approximately 22 percent of SMHS graduates have gone into primary care, while nationally 11 percent of medical school graduates enter primary care.

Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Prevention and Treatment Programs

The committee received a report entitled *Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Prevention and Treatment Programs*. The report identifies funds originally appropriated for prevention or treatment programs relating to risk-associated behavior, including whether programs relate to prevention, treatment, or enforcement of risk-associated behavior. Agencies reported a total of $144.7 million is budgeted for risk-associated programs during the 2015-17 biennium, $14.9 million less than the $129.8 million spent during the 2013-15 biennium. Of the $144.7 million budgeted for the prevention and treatment of alcohol, tobacco, drug abuse, and other kinds of risk-associated behavior during the 2015-17 biennium, $44.3 million (30.6 percent) relates to prevention, $86.5 million (59.8 percent) relates to treatment, and $13.9 million (9.6 percent) relates to enforcement.

Interagency Program for Assistive Technology

The committee received information regarding assistive technology and telehealth. North Dakota Interagency Program for Assistive Technology serves all ages and all types of disabilities. The committee learned North Dakota Interagency Program for Assistive Technology administers an Assistive Technology Act contract. The biennial budget for the program is approximately $1.3 million, including $700,000 from federal funds and $580,000 from the general fund. The program provides assistive technology equipment demonstrations, training, public awareness events, equipment loans, alternative financing programs, and an equipment reuse program. Other services include assistive safety device distribution; telecommunications equipment distribution; deaf-blind program; assistive technology financial loan program; Sprint telecommunications demonstrations; vocational rehabilitation transition program; and other services, such as assessments, consultations, and training.

Program of All-Inclusive Care for the Elderly

The committee received information regarding the program of all-inclusive care for the elderly (PACE). The committee learned Northland Healthcare Alliance began the PACE program in North Dakota in 2008, opening sites in Bismarck and Dickinson and since has added a site in Minot in July 2015. Northland PACE has served approximately 300 people since 2008. To be eligible for PACE, participants must be at least 55 years old, qualify for nursing home level of care, be able to live safely in your own home, and live within an area served by PACE. All PACE participants meet the standard minimum criteria for admission to a skilled nursing facility, but intervention allows them to maintain a better quality of life by remaining in their own homes for a longer period of time. Payment rates for PACE are less than skilled nursing facility care payments, resulting in Medicaid savings to the state. Northland PACE recommended the moratorium placed on the expansion of PACE during the last legislative session be removed and that the Legislative Assembly support the expansion and funding of PACE in additional communities.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned four study areas and nine reports to receive:

1. Section 45 of 2015 House Bill No. 1003 directed a study of the delivery methods of higher education courses offered by institutions under the control of the State Board of Higher Education. The study was to review current methods of distance education offered by institutions, options to improve delivery methods, revenue generated by each type of delivery method, and how course delivery methods may affect future campus infrastructure needs and study the components of the higher education funding formula established in North Dakota Century Code Chapter 15-18.2, including the uses of funding provided through each of the components for costs-to-continue, salary adjustments, and other inflationary adjustments and tuition waivers.
2. Section 46 of 2015 House Bill No. 1003 directed a study of the missions of all 2-year institutions and other institutions under the control of the State Board of Higher Education, as determined by the Legislative Management, including the feasibility and desirability of the institutions offering only workforce and career and technical education programs. The study was to review the current missions of the institutions, current and projected course and program enrollments, projected workforce needs, including how the institutions can serve the needs, and options to increase operating efficiencies.
3. Section 47 of 2015 House Bill No. 1003 directed a study of administrative costs at institutions under the control of the State Board of Higher Education. The study was to review the number of administrator positions at each institution, the number of new administrator positions added at each institution during the previous 5 academic years, the total salaries and benefits associated with the administrator positions, the average salaries and benefits for administrator positions at each institution for each of the previous 5 fiscal years, the percentage of overall institution operating costs attributable to administration, and options to provide future increased legislative appropriations to institutions specifically for instructional purposes.
4. 2015 House Concurrent Resolution No. 3046 directed a study of public higher education in North Dakota for the purpose of developing and implementing a governance model that articulates the role and function of the State Board of Higher Education, its Chairman and other members, including the board's objectives and the monitoring responsibilities necessary to ensure that its objectives are achieved; the role and function of the Commissioner of Higher Education, including the Commissioner's relationship with the board, the Commissioner's responsibility for implementing the board's objectives, and for meeting the board's expectations regarding organizational performance; and the role and function of each institution's president, including the authority and responsibility to supervise and direct the efficient operation of the institution, to execute all directives from the Commissioner of Higher Education, and to report directly to the Commissioner regarding the operation and management of the institution, and the execution of the directives.
5. A biennial report from the University of North Dakota (UND) School of Medicine and Health Sciences Advisory Council pursuant to Section 15-52-04 regarding the strategic plan, programs, and facilities of the school.
6. Annual reports from the State Board of Higher Education pursuant to Section 15-10-59 regarding North Dakota academic scholarships and career and technical education scholarships.
7. Reports from any tribally controlled community college receiving a grant under Chapter 15-70 detailing grant expenditures and recipient demographics.
8. A report from the State Board of Higher Education pursuant to Section 3 of 2015 House Bill No. 1003 regarding the status of the development of a unified workforce, vocational, and technical education program.
9. Reports from the State Board of Higher Education pursuant to Section 25 of 2015 House Bill No. 1003 regarding distributions from the systemwide deferred maintenance, campus security, and internal audit funding pools.
10. A report from the State Board of Higher Education pursuant to Section 38 of 2015 House Bill No. 1003 regarding the use of extraordinary repairs funding and related matching funds.
11. A report from the State Board of Higher Education before July 1, 2016, pursuant to Section 40 of 2015 House Bill No. 1003, regarding the operations and financial condition of Dickinson State University.
12. A report from the State Board of Higher Education prior to July 1, 2016, pursuant to Section 2 of Senate Bill No. 2150, regarding the status of the implementation of the student and student organization disciplinary proceedings uniform procedure.
13. A report from the State Board of Higher Education prior to July 1, 2016, pursuant to 2015 House Concurrent Resolution No. 3052, regarding the policies, procedures, supports, and services available to all public institutions of higher education in the state regarding sexual assault and related incidents.

Committee members were Representatives Mark Sanford (Chairman), Thomas Beadle, Tracy Boe, Lois Delmore, Mark A. Dosch, Kathy Hawken, Richard G. Holman, Dennis Johnson, Matthew M. Klein, Bob Martinson, Lisa Meier, David Monson, Kylie Oversen, Mike Schatz, Cynthia Schreiber Beck, and Roscoe Streyle and Senators Tim Flakoll, Ray Holmberg, Karen K. Krebsbach, Carolyn C. Nelson, David O'Connell, and Larry J. Robinson.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

PREVIOUS LEGISLATIVE STUDIES AND RELATED LEGISLATION

The Legislative Management has established a higher education committee each interim since 1999. These committees have reviewed higher education funding, expectations of the North Dakota University System, and accountability and reporting measures for the University System. The committees, at times, gathered input through the use of a higher education roundtable, which consisted of members of the higher education committee and representatives from the State Board of Higher Education; business and industry; the executive branch; and higher education institutions, including tribal and private colleges.

HIGHER EDUCATION STUDY

As discussed earlier, the committee was assigned four studies:

1. The delivery methods of higher education courses offered by institutions under the control of the State Board of Higher Education;
2. The missions of all 2-year institutions and other institutions under the control of the State Board of Higher Education, as determined by the Legislative Management;
3. Administrative costs at institutions under the control of the State Board of Higher Education; and
4. Public higher education in North Dakota, including higher education governance.

University System Information

The University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, 2 are doctoral-granting institutions, 2 are master's-granting institutions, 2 are universities that offer baccalaureate degrees, and 5 are colleges that offer associate and technical degrees. Each institution is unique in its mission to serve the people of North Dakota.

The original legislative appropriations for the 2015-17 biennium for higher education institutions and the University System office totaled $961,584,277, of which $896,574,867 was from the general fund. The general fund appropriations for the University System were reduced by $58,725,655, or 6.55 percent, to $837,849,212 as a result of general fund budget reductions made during the August 2016 special legislative session.

The University System reported fall 2015 total degree credit headcount enrollment of 47,513 students and a total degree credit full-time equivalent (FTE) enrollment of 38,151 students, compared to fall 2014 headcount enrollment of 47,660 students and FTE enrollment of 38,174 students.

Higher Education Course Delivery Methods

Higher education institutions offer course delivery through several different methods. The following is a summary of various delivery methods:

Delivery Method	Description
Face-to-face on campus	A traditional classroom environment where both the instructor and students are physically located in the same classroom.
Face-to-face off campus	Both the instructor and students are physically located in the same classroom in an off-campus facility.
Correspondence	Instruction is provided through mail, email, or fax.
One-way video	A video connection that allows for the faculty member to be heard and seen by students.
Two-way video	A video and audio connection among two or more sites that allows for communication between faculty members and students.
Synchronous Internet	Online classes that require faculty members and students to be online at the same time for interactive learning.
Asynchronous Internet	Online classes in which faculty members and students are not required to be online at the same time. Faculty members provide learning materials and assignments that may be completed by a student anytime during a specified time period.
Hybrid/blended	Classes in which multiple delivery methods are utilized.

Distance Education Enrollment

The committee learned defining a distance education course is difficult because some courses include both on-campus and online content. For reporting purposes, distance education courses are generally defined as a course with at least 50 percent of content delivered through a distance delivery method, such as the Internet or interactive video.

During the fall 2015 semester, 47 percent of all University System students were enrolled in at least one distance education course. Sixty-one percent of University System students who only enrolled in distance education courses were North Dakota residents. At 2-year institutions, 78 percent of students who enrolled only in distance education courses were North Dakota residents, compared to 31 percent at research institutions. Distance education student counts include high school students taking dual-credit or early-entry courses.

Distance Education Costs

The committee learned University System institutions may charge different tuition and fee rates for distance education courses. The committee reviewed the following schedule detailing the tuition and fee charge differential between online and on-campus courses at University System institutions:

Institution	Additional Online Per-Credit Tuition and Fee Costs Compared to On-Campus Courses	Percentage Difference Between Online and On-Campus Tuition and Fee Costs
Bismarck State College - Regular courses	$80.41	36.7%
Bismarck State College - Energy program	$121.41	46.7%
Dakota College at Bottineau	$24.82	12.5%
Lake Region State College	$18.35	10.0%
North Dakota State College of Science	$38.97	20.7%
Williston State College	$33.68	16.8%
Dickinson State University	$48.80	15.9%
Mayville State University	$14.15	5.1%
Minot State University	$0	0.0%
Valley City State University	$0	0.0%
North Dakota State University	$0	0.0%
University of North Dakota	$0	0.0%

The committee learned it is difficult to determine the costs relating directly to distance education courses. Some costs, such as technology equipment and course software, are directly related to distance education courses. However, many campus services, such as admissions and student finance functions, are shared between on-campus and distance education courses.

When identifiable, the costs of providing distance education courses can vary significantly by program. An online accounting course offered by Minot State University costs $6,858 to provide while an online mechanical fundamentals course at Bismarck State College costs $14,279 to provide.

Institution Missions

The constitution provides for the State Board of Higher Education to control and administer certain higher education institutions in the state. The following is a summary of the references for each University System institution as found in Article VIII, Section 6, of the Constitution of North Dakota:

Institution	Constitutional Reference
University of North Dakota	"The state university and school of mines, at Grand Forks, with their substations."
North Dakota State University	"The state agricultural college and experiment station, at Fargo, with their substations."
North Dakota State College of Science	"The school of science, at Wahpeton."
Dickinson State University, Mayville State University, Minot State University, and Valley City State University	"The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson."
Dakota College at Bottineau	"The school of forestry, at Bottineau."
Bismarck State College, Lake Region State College, Williston State College	There are no specific references in the constitution to these institutions. The constitution provides for the State Board of Higher Education to control and administer "other state institutions of higher education as may hereafter be established."

State Board of Higher Education policy 100.7 provides for the State Board of Higher Education to approve institution missions and roles and any changes to institution missions and roles. The following schedule provides information regarding the mission statement of each institution:

Institution	Mission Statement
Bismarck State College	Bismarck State College, an innovative community college, offers high quality education, workforce training, and enrichment programs reaching local and global communities.
Dakota College at Bottineau	Dakota College at Bottineau provides students with a quality education in a caring environment. The institution values diversity and personal enrichment by promoting engaged learning for employment and university transfer. With the help of a supportive community, Dakota College at Bottineau emphasizes nature and technology to accomplish its mission through an array of curricula, programs, and services.
Dickinson State University	To provide high-quality accessible programs, promote excellence in teaching and learning, support scholarly and creative activities, and to provide services relevant to the economy, health and quality of life for North Dakota citizens.
Lake Region State College	We enhance lives and community vitality through quality education.
Mayville State University	The mission of Mayville State University is to educate and guide students, as individuals, so that they may realize their full career potential and enhance their lives. We do this in an environment that reflects our tradition of personal service, commitment to innovative technology-enriched education and dynamic learning relationships with community, employers and society.
Minot State University	Minot State University is a regional, public institution located in the northwest region of North Dakota. Committed to high academic standards and professional support for students, the university is dedicated to student success, engaged and life-long learning, advancement of knowledge, effective student service and development of students of character. These commitments are grounded in effective and motivated teaching and learning, scholarship and service. The university values critical and creative thinking, vitality of communities and cultures, stewardship of place and the multicultural and global environment. The university honors and supports the dignity and rights of diverse individuals, freedom of expression, academic freedom, ethical and moral behavior, integrity, fairness and honesty.
North Dakota State University	With energy and momentum, North Dakota State University addresses the needs and aspirations of people in a changing world by building on our land-grant foundation.
North Dakota State College of Science	The North Dakota State College of Science is a comprehensive, associate degree-granting college founded on a tradition of quality and integrity. We deliver learner-focused education through a unique and evolving collegiate experience. Using innovative delivery strategies, North Dakota State College of Science anticipates and responds to statewide and regional workforce needs by providing access to occupational/technical programs, transfer programs, and workforce training.
University of North Dakota	A national research university that engages in the creation of new knowledge and which fosters scholarship and creative activity, the University of North Dakota maintains its original mission in liberal arts, business, education, law, medicine, engineering and mines; and has also developed special missions in nursing, fine arts, aerospace, energy, and international studies. UND provides a wide range of challenging academic programs for undergraduate, professional and graduate students through the doctoral level. The University encourages students to make informed choices, to communicate effectively, to be intellectually curious and creative, to commit themselves to lifelong learning and the service of others, and to share responsibility both for their own communities and the world.
Valley City State University	Valley City State University is a public, regional university offering exceptional programs in an active, learner-centered community that promotes meaningful scholarship, ethical service, and the skilled use of technology. As an important knowledge resource, the University offers programs and outreach that enrich the quality of life in North Dakota and beyond. Through flexible, accessible, and innovative baccalaureate and master's programs, Valley City State University prepares students to succeed as educators, leaders, and engaged citizens in an increasingly complex and diverse society.
Williston State College	Williston State College, "Where the People Make the Difference", is an open admission learned-center, comprehensive community college of the North Dakota University System providing academic transfer and occupational education, workforce training, and cultural activities to residents of North Dakota, the Upper Plains, and beyond. Williston State is committed to providing educational opportunities that are accessible, affordable, life changing, and life-long.

Degrees Offered

The following is a summary of degrees offered at each institution:

Institution	Degrees Offered
Bismarck State College	Certificates, diplomas, associate's degrees, bachelor's degrees (limited)
Dakota College at Bottineau	Certificates, diplomas, associate's degrees
Dickinson State University	Certificates (limited), associate's degrees (limited), bachelor's degrees
Lake Region State College	Certificates, diplomas, associate's degrees
Mayville State University	Associate's degrees (limited), bachelor's degrees

Institution	Degrees Offered
Minot State University	Associate's degrees (limited), bachelor's degrees, master's degrees
North Dakota State University	Bachelor's degrees, master's degrees, doctoral degrees
North Dakota State College of Science	Certificates, diplomas, associate's degrees
University of North Dakota	Bachelor's degrees, master's degrees, doctoral degrees
Valley City State University	Bachelor's degrees, master's degrees (limited)
Williston State College	Certificates, diplomas, associate's degrees

TrainND

In addition to offering degree programs, the TrainND program offers workforce training at certain institutions. The TrainND program is divided into the following four regions to serve local business and industry:

TrainND Region	Location
Northwest	Williston State College
Northeast	Lake Region State College
Southeast	North Dakota State College of Science
Southwest	Bismarck State College

Information Received

The committee learned clear mission differentiation for higher education institutions reduces unnecessary duplication and increases productivity. Lacking clear institution missions can cause ambiguous goals and accountability metrics.

The committee received an update regarding the University System campus mission task force. The task force was formed in 2015 to determine if the workforce needs of the state, and regions of the state, are being met by the current structure and program delivery of the University System. The task force reviewed the 5-year trends in program completions and analyses of future trends in education, training, and workforce needs. The task force determined education and training degrees offered in one region of the state do not translate into employers being able to employ those skilled workers in another part of the state. The task force also found uneven employee pools for jobs depending on location and salary levels.

University System Strategic Plan

The committee received information regarding updates to the strategic plan of the University System. The committee learned the University System is working to address the needs of the state by gathering information from key stakeholders. University System representatives have participated in sessions to receive feedback from government and community leaders, businesses, and campus communities.

The committee learned the strategic plan was updated to include the following goals:

- Deliver degrees that are the best value in the nation;
- Provide programs people want, where and when they need them;
- Equip students for success; and
- Maximize strengths of the unified system.

The University System office has created a strategic plan webpage on its website to improve transparency and accountability by providing information and trends regarding key metrics.

Administrative Costs

There are several definitions that can be used to identify higher education institution administrative costs which also may be referred to as "institutional support." The Integrated Postsecondary Data System (IPEDS) defines "institutional support" as:

> "A functional expense category that includes expenses for the day-to-day operational support of the institution. Includes expenses for general administrative services, central executive-level activities concerned with management and long range planning, legal and fiscal operations, space management, employee personnel and records, logistical services such as purchasing and printing, and public relations and development. Also includes information technology expenses related to institutional support activities. If an institution does not separately budget and expense information technology resources, the IT costs associated with student services and operation and maintenance of plant will also be applied to this function."

The definition for administrative staff positions also varies based by reporting type. In previous IPEDS surveys, administrative staff positions were categorized as follows:

- Executive, administrative, and managerial - Occupational positions directly related to management policies or general operations of the institution. Examples include presidents, vice presidents, managers, provosts, and deans whose principal occupational activity is administration rather than instruction.
- Professional - Occupational positions providing services and support, such as accountants, human resources professionals, and attorneys.

University System Employees

The committee reviewed the following schedule detailing the number of University System FTE employees per 1,000 at University System institutions:

FTE Employees Per 1,000 Students at University System Institutions

Institution	Total FTE Employees	FTE Employees Per 1,000 Students	National Average FTE Employees Per 1,000 Students[1]	Difference Between Institution and National Average for FTE Employees Per 1,000 Students
Bismarck State College	385	130	115	15
Dakota College at Bottineau	90	180	115	65
Lake Region State College	130	134	115	19
North Dakota State College of Science	375	163	115	48
Williston State College	131	230	115	115
Dickinson State University	243	191	150	41
Mayville State University	194	252	150	102
Minot State University	485	186	140	46
Valley City State University	216	219	150	69
North Dakota State University	2,915	228	234	(6)
University of North Dakota	3,075	244	234	10

[1]As determined in the February 2014 Delta Cost Project Issue Brief: *Labor Intensive or Labor Expensive? Changing Staffing and Compensation Patterns in Higher Education*.

The committee reviewed the following schedule detailing the number of University System administrators by institution type as of July 1, 2005, July 1, 2010, and July 1, 2015:

University System Administrator Count by Position and by Institution Type

Position	2005 Count	2010 Count	2015 Count	Number Increase from 2005 to 2015	Percentage Increase from 2005 to 2015
Executive					
Research universities	14	16	17	3	21%
Regional universities	21	21	21	0	0%
Community colleges	14	15	16	2	14%
Total - Executive	49	52	54	5	10%
Dean					
Research universities	17	18	17	0	0%
Regional universities	4	4	5	1	25%
Community colleges	6	6	6	0	0%
Total - Dean	27	28	28	1	4%
Officer					
Research universities	58	63	68	10	17%
Regional universities	4	6	5	1	25%
Community colleges	12	12	15	3	25%
Total - Officer	74	81	88	14	19%
Non-banded administrator					
Research universities	3	3	3	0	0%
Community colleges	0	1	1	1	100%
Total - Non-banded administrator	3	4	4	1	33%

University System Administrator Count by Position and by Institution Type					
Position	**2005 Count**	**2010 Count**	**2015 Count**	**Number Increase from 2005 to 2015**	**Percentage Increase from 2005 to 2015**
Non-banded EERC position					
Research universities	27	33	32	5	19%
Total - Non-banded EERC position	27	33	32	5	19%
Director, Associate Director, Manager					
Research universities	55	69	77	22	40%
Regional universities	53	58	65	12	23%
Community colleges	28	34	37	9	32%
Total - Director, Associate Director, Manager	136	161	179	43	32%
Associate Dean					
Research universities	6	8	11	5	83%
Total - Associate Dean	6	8	11	5	83%
Assistant Dean					
Research universities	3	3	3	0	0%
Total - Assistant Dean	3	3	3	0	0%
Grand total	325	370	399	74	23%

The committee reviewed the following information regarding the average salaries of administrators by position and institution type:

University System Administrator Average Salaries by Position and by Institution Type					
Position	**2005 Average Salary**	**2010 Average Salary**	**2015 Average Salary**	**Increase from 2005 to 2015**	
Executive (Presidents only)					
Research universities	$192,006	$308,730	$363,082	$171,076	89%
Regional universities	$161,549	$187,295	$218,440	$56,891	35%
Community colleges	$136,007	$168,037	$194,938	$58,931	43%
University System average	$157,423	$203,879	$237,967	$80,544	51%
Executive (Excluding Presidents)					
Research universities - Excluding medical school	$126,231	$173,565	$215,017	$88,786	70%
Research universities - Medical school	$337,547	$525,000	$674,588	$337,041	100%
Regional universities	$77,839	$98,746	$118,154	$40,315	52%
Community colleges	$83,516	$109,663	$128,911	$45,395	54%
University System average	$100,097	$134,992	$164,554	$64,457	64%
Dean					
Research universities	$132,596	$181,410	$219,544	$86,948	66%
Regional universities	$79,435	$101,698	$119,442	$40,007	50%
Community colleges	$70,697	$90,878	$110,367	$39,670	56%
University System average	$110,965	$150,623	$178,274	$67,309	61%
Officer					
Research universities	$80,465	$109,409	$128,862	$48,397	60%
Regional universities	$61,117	$70,987	$94,081	$32,964	54%
Community colleges	$67,729	$79,866	$95,998	$28,269	42%
University System average	$77,354	$102,186	$121,284	$43,930	57%
Director, Associate Director, Manager					
Research universities	$63,876	$85,483	$98,451	$34,575	54%
Regional universities	$43,224	$56,061	$65,332	$22,108	51%
Community colleges	$54,326	$66,226	$80,535	$26,209	48%
University System average	$53,862	$70,817	$82,721	$28,859	54%
Associate Dean					
Research universities - Excluding medical school	$86,482	$137,688	$160,115	$73,633	85%
Research universities - Medical school			$500,000	N/A	N/A
University System average	$86,482	$137,688	$191,014	$104,532	121%

University System Administrator Average Salaries by Position and by Institution Type					
Position	2005 Average Salary	2010 Average Salary	2015 Average Salary	Increase from 2005 to 2015	
Assistant Dean					
Research universities	$53,695	$71,317	$90,632	$36,937	69%
University System average	$53,695	$71,317	$90,632	$36,937	69%

Between 2005 and 2015, the total number of faculty and teaching staff at all University System institutions decreased by 213, from 2,102 in 2005 to 1,889 in 2015. During the same time period, the systemwide average compensation levels of faculty with a full professor rank increased from $73,198, to $104,934, and compensation levels of associate professors increased from $56,558, to $76,601. The number of administrators increased by 74, from 325 to 399, during the same time frame.

University System Governance

State Board of Higher Education

In 1938 the voters of the state approved an initiated measure to create a State Board of Higher Education. The measure became Article 54 of the Constitution of North Dakota. The following table highlights the principal provisions of Article 54 and changes to those provisions as currently contained in Article VIII, Section 6, of the Constitution of North Dakota.

Original Article 54 of the Constitution of North Dakota	Current Article VIII, Section 6, of the Constitution of North Dakota
State Board of Higher Education is created for the "control and administration" of the listed institutions.	No change
Seven members appointed by the Governor • Must be qualified electors and taxpayers • Must have resided in the state for at least 5 years	No change
	Governor shall appoint 8th member, a full-time resident student at an institution under the board's control (1994).
Governor shall select appointee from a list of three names unanimously agreed to by: • The President of the North Dakota Education Association • The Chief Justice of the Supreme Court • The Superintendent of Public Instruction	Governor shall select appointee from a list of three names agreed to by four of the following five: • The President of the North Dakota Education Association • The Chief Justice of the Supreme Court • The Superintendent of Public Instruction • President Pro Tempore of the Senate (1996) • Speaker of the House of Representatives (1996)
Appointee must be confirmed by the Senate	No change
Members are removable by impeachment	No change
Term of office is 7 years	Term of office is 4 years (1996)
Legislature shall provide adequate funds for the proper carrying out of the functions and duties of the State Board of Higher Education.	No change
Board shall elect a competent person to serve as secretary.	No change
Board has "full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions."	No change
Board has the "power to delegate to its employees details of the administration of the institutions under its control."	No change
Board has "full authority to organize or re-organize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration" of the institutions.	No change
Board shall prescribe "standard systems of accounts and records."	No change
Board shall biennially and within 6 months of a regular legislative session provide "a report to the Governor, covering in detail the operations of the educational institutions under its control."	No change

Original Article 54 of the Constitution of North Dakota	Current Article VIII, Section 6, of the Constitution of North Dakota
Heads of the institutions are to submit budget requests for the biennial appropriations to the board • Board shall consider and revise the budgets "as in its judgment shall be for the best interests of the educational system of the State." • Board shall prepare and present a single unified budget to the legislature. • Appropriations for all of the institutions must be contained in one legislative measure.	No change
	Budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota State University of Agriculture and Applied Science may be separate from those of state educational institutions (1964).
Board shall have "control of the expenditure of the funds belonging to and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this State."	No change
Board shall appoint a state commissioner of higher education: • 3-year term • Removable by board for cause • Graduate of a reputable college or university • By training and experience must be familiar with the problems peculiar to higher education	No change

Review of Higher Education Governing and Coordinating Boards

Governing Boards - A consolidated higher education governing board manages and controls certain public institutions of higher education. Some governing boards are constitutionally mandated while others are established statutorily. The duties of governing boards can vary and may include preparing budgets, allocating resources, establishing personnel policies, managing assets, approving programs, and hiring chief executives for institutions.

The following table prepared by the Ohio Board of Regents staff lists potential strengths and weaknesses of consolidated governing boards:

Higher Education Governing Board Model	
Potential Strengths	**Potential Weaknesses**
Engaged in statewide strategic planning	Central planning can cause a slow response to workforce and business needs
Responsive to state priorities	Can evolve into large and inefficient bureaucracies
Guards against duplication	Can have political influence on micro issues at the institution level
Ensures program quality through program approval methods	Often lacks necessary data to assess institutional performance
Is able to address articulation and transfer issues	Tense relationships can develop between professional leaders and state government
	May become weighed down with internal concerns

Coordinating Boards - A higher education coordinating board is a single agency other than a governing board that has the responsibility for the statewide coordination of certain higher education policy areas. Coordinating boards generally do not manage institutions and are not responsible for hiring or setting the compensation of institution chief executives. Coordinating boards typically focus more on the needs of the state rather than the needs of the institutions. Some coordinating boards do have the authority to regulate certain areas, such as approving new programs at institutions.

The following table prepared by the Ohio Board of Regents staff lists potential strengths and weaknesses of higher education coordinating boards:

Higher Education Coordinating Board Model	
Potential Strengths	**Potential Weaknesses**
Quick to respond to market needs	State priorities can be hindered by local lobbying efforts
Engaged in statewide strategic planning	May be perceived as powerless if consensus is not achieved

Higher Education Coordinating Board Model	
Potential Strengths	**Potential Weaknesses**
Generally responsive to state priorities	Statewide initiatives can be hindered without the voluntary cooperation of all institutions
Private sector usually a direct partner	Difficult to reverse enacted policies or make policy changes
Sensitive to consumer needs	Institutional decisions at the local level may be in direct conflict with views at the state level
Builds consensus to make change, particularly with budgeting, program review, and articulation	

Information Received

The committee learned the Association of Governing Boards believes successful higher education governing boards must:

1. Improve value in their institutions and lead a restoration of public trust in higher education itself;
2. Add value to institutional leadership decisionmaking by focusing on their role as institutional fiduciaries;
3. Act to ensure the long-term sustainability of their institutions by addressing changed finances and the imperative to deliver high-quality education at a lower cost;
4. Improve shared governance within their institutions through attention to board-president relationships and a reinvigoration of faculty shared governance;
5. Improve their own capacity and functionality through increased attention to the qualifications and recruitment of members, board orientation, committee composition, and removal of members for cause;
6. Focus their time on issues of greatest consequence to the institution by reducing time spent reviewing routine reports and redirecting attention to cost-cutting and strategic issues not addressed elsewhere; and
7. Hold themselves accountable for their own performance by modeling the same behaviors and performance they expect from others in their institutions.

The committee learned higher education governing boards, state legislatures, and state governors each have a separate role in administering higher education in a state. State legislatures must define expectations and accountability for higher education in states and must also provide adequate support for higher education systems to effectively carry out their missions.

The committee learned effective higher education governing boards must identify the key needs of a state and effectively respond. Higher education governing boards must also effectively govern institutions and provide a buffer between political and special interests and the higher education system.

Higher Education Funding

The Legislative Assembly, in 2013 Senate Bill No. 2200, adopted a higher education funding method beginning with the 2013-15 biennium based on an adjusted student credit-hour calculation. The calculation involves multiplying a base amount per student credit-hour by an adjusted student credit-hour calculation for each institution. The resulting equalized base budget is then adjusted for inflation to determine total institutional funding.

The adjusted student credit-hour amount for an institution is determined as follows:

1. Completed student credit-hours are determined for each institution. A completed credit-hour is one for which a student met all institutional requirements and obtained a passing grade.
2. A weighted completed student credit-hour calculation is determined by multiplying each institution's completed student credit-hours by an instructional program classification factor. The factor amount for each program classification is based upon historical costs of instruction in each program.
3. The weighted completed student credit-hour amount for each institution is then adjusted for:
   a. A credit completion factor which is based on total credits completed at an institution. Institutions that have a lower credit-hour output receive a greater weighting factor.
   b. An institutional size factor based on the square footage of facilities at an institution. Institutions that have a large amount of infrastructure may receive an additional factor adjustment.

The adjusted student credit-hours are then multiplied by a base per credit amount which varies based on institution type. The following is a summary of the base rates for each institution:

Institutions	Biennial Base Rate Per Credit-Hour	
	2013-15	2015-17
North Dakota State University, University of North Dakota	$66.35	$72.63
Dickinson State University, Mayville State University, Valley City State University	$95.57	$107.33
Minot State University	$98.75	$107.33
Bismarck State College, Dakota College at Bottineau, Lake Region State College, North Dakota State College of Science	$101.73	$114.88
Williston State College	$104.88	$114.88

Through June 30, 2017, by state law, an institution may not receive less than 96 percent of the state funding to which the institution was entitled during the previous fiscal year. Under the adjusted student credit-hour funding method, funding for major capital projects is appropriated separately from the formula.

Preliminary 2017-19 Biennium Funding Formula Calculations

The committee learned the 2017-19 biennium higher education funding formula calculations will be based on student credit-hours completed during the 2013-15 biennium. The preliminary calculations for the 2013-15 biennium indicate 7,544,545 adjusted student credit-hours were completed at institutions. This represents an increase of 191,661, or 2.6 percent, in completed adjusted student credit-hours from the 2011-13 biennium.

The committee reviewed the following schedule which details preliminary funding formula calculations for the 2017-19 biennium:

Institution	2015-17 Biennium Base Budget	2017-19 Biennium Preliminary Funding Formula Calculation	Increase (Decrease)	
Bismarck State College	$36,580,826	$37,786,307	$1,205,481	3.3%
Dakota College at Bottineau	8,703,616	9,450,029	746,413	8.6%
Lake Region State College	14,987,556	15,683,016	695,460	4.6%
North Dakota State College of Science	44,731,764	43,329,152	(1,402,612)	(3.1%)
Williston State College	10,248,265	10,323,737	75,472	0.7%
Dickinson State University	26,215,932	21,981,678	(4,234,254)	(16.2%)
Mayville State University	16,739,145	17,590,442	851,297	5.1%
Minot State University	48,758,181	49,070,643	312,462	0.6%
Valley City State University	25,469,668	25,219,223	(250,445)	(1.0%)
North Dakota State University	157,410,539	160,610,714	3,200,175	2.0%
University of North Dakota	224,608,494	236,599,561	11,991,067	5.3%
Total	$614,453,986	$627,644,502	$13,190,516	2.1%

The committee learned the preliminary 2017-19 biennium funding calculation for Dickinson State University would be $25,167,295 if the minimum amount payable clause in the higher education funding formula were to be extended. This would result in a reduction of funding for the institution of $1,048,637 rather than $4,234,254.

Other Information Received

University System Campus Master Plan and Space Utilization Study

The committee received updates regarding the University System campus master plan and space utilization study. The purpose of master planning is to resolve strategic program needs through an analysis of criteria, such as the availability of space for a program and the condition of the space. The University System first engaged a higher education planning consultant in 2014 to review institution programs, facilities, master plans, and space utilization.

The committee learned the criteria for determining space utilization includes room schedules and density. Room scheduling is the amount of time classrooms and laboratories are being used. Room density is the number of students occupying the available student spaces in each room compared to total capacity. The utilization rate is calculated by multiplying its scheduling rate times its density rate.

The space utilization goal is for each classroom to be used at least 30 hours per week with an occupancy rate of at least 80 percent of capacity. The space utilization goal for laboratories is for each laboratory to be used at least 20 hours per week with an occupancy rate of at least 75 percent of capacity.

The committee learned on average, University System institutions have below average space utilization rates. Utilization rates of classrooms at institutions range from 22.6 to 91.3 percent while the utilization rates of laboratories at institutions range from 32 to 176.7 percent. Low space utilization rates may be caused by excessive classroom or laboratory space at an institution, noncentralized scheduling methods, or space that is in poor condition. Having a space

utilization rate of over 100 percent indicates the classroom or laboratory is being scheduled and occupied at rates higher than the target rate. An institution with high space utilization rates may need to review options to provide more space for programs.

The committee learned deferred maintenance amounts for a building are based on the projected life span of building components. Even if a component has a projected life span of 10 years, the component may last much longer than the projection. Proper management of buildings at a facility includes carrying a deferred maintenance balance for the building. Campus buildings are evaluated to determine if repairs should be made to the building or if it is better to demolish the structure. Demolition costs of a building are determined by its size, how the building was constructed, and whether there are hazardous materials located in the building.

Campus Police Jurisdiction Issues

The committee received an update regarding campus police jurisdiction issues. The committee learned in *Korschel v. Levi*, the North Dakota Supreme Court found that a North Dakota State University police officer did not have authority to initiate a police stop and arrest an individual off of the campus. The decision does not affect campus police jurisdiction on campus, but does affect the use of joint powers agreements to enable campus police to provide law enforcement services in areas near a campus. Campus police are still authorized to assist other law enforcement agencies off of a campus in certain situations.

Student Financial Assistance Programs

The committee received information regarding various state student financial assistance programs. The committee reviewed the following schedule which provides details regarding the programs:

Program	Description	Award Amount	2015-17 Biennium General Fund Appropriations
Student financial assistance grants	Needs-based grants awarded to students based on FAFSA information	Maximum grant of $975 per semester	$25,634,276
Scholars program	Scholarships awarded to the top-ranked high school graduates based on ACT scores	Full amount of tuition	$2,113,584
Academic and career and technical education (CTE) scholarship program	Scholarships awarded to resident students who achieve certain academic standards in high school	$750 per semester	$14,054,677
Indian scholarship program	Merit or needs-based scholarships awarded to students who are enrolled members of a federally recognized Indian tribe	Up to $2,000 per academic year	$649,267
Professional student exchange program	Secures admission opportunities and reduces tuition costs for North Dakota students who enroll in veterinary medicine, dentistry, and optometry programs at certain out-of-state institutions	The amount of tuition reduced varies by program	$3,809,708
Education incentive programs	Provides student loan forgiveness through the teacher shortage loan forgiveness program and science, technology, engineering, and mathematics (STEM) occupations loan forgiveness program	Provides $1,500 of student loan repayment per year, up to a maximum of 4 years	$3,349,000

The committee learned that in addition to the state financial assistance programs, there are several institutional scholarship programs that provide student financial assistance. Funding for most of the scholarships are provided by foundations or donors for various purposes, such as athletic or fine arts scholarships. Approximately $22.8 million of institutional scholarships were awarded in the 2014-15 academic year.

The committee received information regarding estimated costs to expand state student financial assistance programs. The committee reviewed the following schedule detailing the estimated costs to expand the academic and career and technical education scholarship program and the needs-based student financial assistance grant program:

Program	Current Award Level	Potential Increased Award Level	Estimated Additional Funding Required to Increase Award Level	
			2017-19 Biennium	2019-21 Biennium
Academic and CTE scholarships	$750 per semester; $6,000 lifetime maximum	$850 per semester; $6,800 lifetime maximum	$900,000	$548,090
Needs-based student financial assistance grants	$975 per semester; $7,800 lifetime maximum	$1,025 per semester; $8,200 lifetime maximum	$1,438,500	$0
		$1,050 per semester; $8,400 lifetime maximum	$2,157,750	$0

The committee reviewed the following schedule which details the estimated costs to provide loan forgiveness to all eligible program applicants through the teacher shortage loan forgiveness program and the STEM occupations loan forgiveness program:

	Teacher Shortage Loan Forgiveness Program	STEM Occupations Loan Forgiveness Program
Annual loan forgiveness amount	$1,000	$1,500
Lifetime maximum loan forgiveness	$3,000	$6,000
2014 application year:		
Eligible applicants	481	1,161
Cost for all eligible applicants	$481,000	$1,741,500
Actual program funding	373,072	1,154,893
Shortfall	$107,928	$586,607
2015 application year:		
Eligible applicants	540	1,002
Cost for all eligible applicants	$540,000	$1,503,000
Actual program funding	424,885	1,178,259
Shortfall	$115,115	$324,741

The committee learned an advisory board provided recommendations to the State Board of Higher Education regarding the needs-based financial aid program, but that other financial aid programs do not have advisory boards.

E-Transcripts System

The committee received information regarding the E-Transcripts system. The committee learned the system is used by elementary and secondary schools to identify courses completed by a student. The system can be used to transfer information among school districts or to colleges. The system also has a student and parent portal to allow for the viewing of transcripts. The system is currently being utilized by several school districts in the state.

The committee learned the E-Transcripts system could be utilized at higher education institutions. A uniform application system at University System institutions could allow for students to use e-transcripts to apply for admission to system institutions.

Higher Education Challenge Grant Program

The committee received information regarding the higher education challenge grant program. The committee learned the program is used to provide grants to University System institutions to match private donations. The 2015 Legislative Assembly appropriated $23.5 million for the grant program during the 2015-17 biennium. Of the funding appropriated, $7 million was designated to be available to each research institution, $1 million was designated to be available to each non-research institution, and $500,000 was designated to be available to non-research institutions that were awarded $1 million of grants during the biennium.

The grant program is effective through the end of the 2015-17 biennium.

Campus Assessments

The committee discussed the financial assessments imposed by the University System office on system institutions. The committee learned the assessments are used to provide systemwide services such as internal auditing. The State Board of Higher Education approves major assessments charged to campuses.

Other Information Received

The committee also received information regarding:

- Student journalist freedom of expression at campuses.
- The University System student affordability report.
- Student success measures.
- The University System tuition waiver report.
- Campus student safety initiatives.
- Historical general fund appropriations and tuition rate increases for the University System.
- University System information technology data inconsistencies.
- Effects of budget allotments on University System institutions.
- Educational pathways in information technology.
- University System institution research activities.
- State and national trends in higher education.
- Open educational resources.
- Predictive analytics reporting.
- The North Dakota State University research index tool.
- The NexusND research initiative.
- University System information technology projects and issues.
- The NDChoose Program.
- Student debt.
- The Free Application for Federal Student Aid program.
- State funding for University System capital projects.
- University System institution revenues and expenditures by category.
- State Authorization Reciprocity Agreements.
- The use of the Starfish Student Success System at Minot State University.
- Costs of maintaining facilities at institutions.
- University System graduate pass rates on occupational licensing exams.

During the interim, the committee held meetings on the campuses of several University System institutions, received updates regarding unique issues affecting the campuses, and conducted tours of selected campus buildings.

The committee also met jointly with the State Board of Higher Education, focusing on student affordability issues as previously discussed in this report.

Committee Considerations

The committee, through the Legislative Management Chairman, forwarded committee findings related to higher education governance to the State Board of Higher Education for consideration in the board's review of higher education governance issues.

Recommendations

The committee recommends:

1. House Bill No. 1036 to repeal the student financial assistance grant advisory board.
2. Senate Bill No. 2035 to remove the expiration date from Section 15-18.2-06 which establishes a minimum amount payable to an institution through the higher education funding formula.
3. Senate Bill No. 2036 to continue the higher education challenge grant program.
4. House Bill No. 1037 to require local school districts to use the E-Transcripts system.

5. Senate Bill No. 2037 to increase the teacher shortage loan forgiveness program award amount from $1,000 to $1,500 per year.

The committee considered, but does not recommend, a bill draft to clarify the use of joint powers agreements which would authorize campus police to continually exercise law enforcement activities in areas adjacent to a campus. The committee also considered, but does not recommend, a bill draft to prohibit the University System office from assessing campuses for systemwide services.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL

The UND School of Medicine and Health Sciences Advisory Council consists of 15 members, including a majority party member and minority party member from both the Senate and House of Representatives. Other members to the advisory council are selected by the Department of Human Services, State Board of Higher Education, State Department of Health, North Dakota Medical Association, North Dakota Hospital Association, the Department of Veterans' Affairs hospital in Fargo, the UND Center for Rural Health, and the Dean of the School of Medicine and Health Sciences.

Section 15-52-04 requires the UND School of Medicine and Health Sciences Advisory Council to provide a biennial report to the Legislative Council. The report is to provide recommendations regarding the strategic plan, programs, and facilities of the school. Recommendations for implementing strategies through the school must address the health care needs of the people of the state and provide information regarding the state's health care workforce needs. Recommendations of the advisory council may address the areas of medical education and training, recruitment and retention of health care professionals, factors influencing the practice environment of health care professionals, access to health care, patient safety, quality of health care, and financial challenges in the delivery of health care.

Report

The committee received a report from representatives of the UND School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the school. The committee learned the UND School of Medicine and Health Sciences is still in the process of implementing the health care workforce initiative. The initiative includes the following four major initiative areas:

- Reduce disease burden to lower the demand for health care services and related costs;
- Train more physicians and health care providers by increasing medical and health science class sizes and expanding residency programs;
- Retain more health care providers in the state through programs, such as the RuralMed scholarship program; and
- Improve the efficiency of the health care delivery system by training health care providers in interprofessional health care teams and by the use of learning communities.

NORTH DAKOTA CAREER AND TECHNICAL EDUCATION SCHOLARSHIPS AND ACADEMIC SCHOLARSHIPS

The 2009 Legislative Assembly created the CTE and academic scholarship programs. Eligibility criteria for the scholarship programs are in Chapter 15.1-21, and were subsequently adjusted by the Legislative Assembly in 2011, 2013, and 2015. The current eligibility requirements require a student to be a resident of the state and meet the following program requirements for the scholarships as follows:

CTE Scholarship	Academic Scholarship
Complete four units of English language arts	Complete four units of English language arts
Complete three units of mathematics, including one unit of Algebra II and two units of other mathematics	Complete one unit of Algebra II and one unit of mathematics for which Algebra II is a prerequisite
Complete three units of science	Complete three units of science
	Complete three units of social studies
Complete one unit of physical education or one-half unit of physical education and one-half unit of health	Complete one unit of physical education or one-half unit of physical education and one-half unit of health
Complete two units of a coordinated study plan as recommended by the Department of Career and Technical Education	Complete two units of the same foreign language, the same Native American language, American sign language, or career and technical education from a coordinated study plan approved by the Superintendent of Public Instruction
Complete one unit selected from foreign language, Native American language, American sign language, fine arts, or career and technical education	Complete one unit selected from foreign language, Native American language, American sign language, fine arts, or career and technical education

CTE Scholarship	Academic Scholarship
Complete five additional units, two of which must be in the area of career and technical education	Complete any five additional units
Obtain a cumulative grade point average of at least 3.0 on a 4.0 grading scale for all courses taken or only for courses taken that are required for the scholarship	Obtain a cumulative grade point average of at least 3.0 on a 4.0 grading scale for all courses taken or only for courses taken that are required for the scholarship
Obtain a grade of at least "C" in each unit or one-half unit required for the scholarship	Obtain a grade of at least "C" in each unit or one-half unit required for the scholarship
Receive a composite score of at least 24 on the ACT or a score of at least five on each of three WorkKeys assessments	Receive a composite score of at least 24 on the ACT
	Fulfill one unit required for the scholarship through an advanced placement course or fulfill one-half unit required for the scholarship through a dual-credit course

Any student who meets the requirements for a CTE scholarship or an academic scholarship is eligible to receive a scholarship of $750 per semester, or $500 per quarter, for each period the student is enrolled full-time at a North Dakota higher education institution and maintains eligibility up to a maximum amount of $6,000. Scholarships may be provided to students for up to 6 years following the student's graduation from high school.

The 2015-17 biennium legislative appropriation provides $14,054,677 from the general fund for the program, an increase of $4,054,677 from the 2013-15 biennium legislative appropriation.

Section 15-10-59 requires the State Board of Higher Education to provide an annual report to the Legislative Management regarding the number of North Dakota academic and CTE scholarships awarded and demographic information pertaining to the recipients.

Reports

Representatives of the University System provided reports to the committee regarding the academic and CTE scholarship programs. The committee learned of the 7,839 high school seniors in the state that graduated in 2015, a total of 1,709, or 22 percent, qualified to receive an academic or CTE scholarship. Since the program began in 2010, there have been 48,350 high school graduates in the state and 8,902, or 18 percent of those graduates were eligible to receive an academic or CTE scholarship. Of the 8,902 eligible students, 5,697 students qualified for an academic scholarship and 3,205 students qualified for a CTE scholarship.

The committee learned a total of 4,313 students received an academic or CTE scholarship during the fall 2015 semester as follows:

	Type of Institution Attended by Scholarship Recipients (Fall 2015 Semester)				
	2-Year Public or Tribal Institution	4-Year Public Institution	Public Research Institution	Private Institution	Total
Academic scholarship recipients	142	292	2,009	341	2,784
CTE scholarship recipients	315	283	765	166	1,529
Total	457	575	2,774	507	4,313

GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES

Chapter 15-70 creates an assistance program for tribally controlled community colleges located in the state. Funding is to be distributed to the tribally controlled community colleges to defray the costs of education associated with the enrollment of nonbeneficiary students.

In order to qualify for a grant, a qualified institution must submit an application to the State Board of Higher Education that documents the enrollment status of each student for whom financial assistance is sought. If an application is approved, the State Board of Higher Education is to distribute an annual payment to the institution for each nonbeneficiary student enrolled at the institution. The amount of payment is to be equal to the per student payment provided to institutions under the federal Tribally Controlled Colleges and Universities Assistance Act of 1978 or a prorated amount if funding is limited.

Each tribal college receiving a grant under Chapter 15-70 is to submit a report to the Legislative Council detailing the expenditures of the grant funds received by the institution. Additionally, each college is to submit a copy of the institution's latest audit report and documentation of the enrollment status of each student for whom financial assistance is requested. Any institution that fails to meet the reporting requirements is ineligible to receive future grants until the required information is submitted.

The table below details legislative appropriations for grants to tribally controlled community colleges.

	General Fund	Permanent Oil Tax Trust Fund	Student Loan Trust Fund
2007-09 biennium		$700,000	
2009-11 biennium		$700,000	
2011-13 biennium	$1,000,000		
2013-15 biennium	$1,000,000		
2015-17 biennium	$500,000		$500,000

Report

Representatives of the University System provided reports to the committee regarding the allocation of tribal college assistance grants. The committee learned $5,091.83 of grant funding was awarded per FTE nonbeneficiary student during the 2015-16 academic year. The committee reviewed the following schedule detailing the allocation of grant funding during the 2015-16 academic year:

Tribal College Assistance Grants - 2015-16 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	18	12.42	$63,225
Fort Berthold Community College	21	17.00	86,561
Sitting Bull College	4	3.83	19,517
Turtle Mountain Community College	29	19.79	100,778
United Tribes Technical College	51	43.17	219,794
Total	123	96.21	$489,875

UNIFIED WORKFORCE, VOCATIONAL, AND TECHNICAL EDUCATION PROGRAM SYSTEM

Section 15-10-57, as enacted by 2015 House Bill No. 1003, requires the State Board of Higher Education to establish and maintain a unified system to offer workforce training, vocational education, and technical education programs at institutions under its control. The section requires the board to periodically review programs offered at institutions under its control and revise program offerings based on the workforce needs of the state. The section also requires the board to develop administrative arrangements among institutions under its control to make possible the efficient use of facilities and staff.

Section 15-10-58 requires the board to establish a workforce education advisory council to advise the board regarding skills and qualifications needed for workforce training, vocational, and technical education programs offered by institutions under the control of the board. The advisory council is also to provide information to the board regarding the workforce needs of the state. The advisory council consists of a representative of the Department of Career and Technical Education, a representative of Job Service North Dakota, a representative of the Department of Commerce, and eight members representing business and industry in the state. The eight members representing business and industry are to be appointed by the Chairman of the Legislative Management.

Section 3 of 2015 House Bill No. 1003 requires the State Board of Higher Education to provide a report to the Legislative Management regarding the status of the development of the unified system.

Report

Representatives of the University System provided a report on the activities of the workforce education advisory council. The committee learned the membership of the council consists of representatives of state agencies and private businesses. The council first met in January 2016 and developed a council charter. The council also reviewed state workforce programs and budgets and high-demand occupation areas.

DISTRIBUTIONS FROM SYSTEMWIDE FUNDING POOLS AND USES OF DEFERRED MAINTENANCE FUNDING

The 2015 Legislative Assembly, in House Bill No. 1003, provided general fund appropriations for the following systemwide funding pools:

Deferred maintenance (one-time funding)	$8,700,000
Campus security (one-time funding)	$3,000,000
Internal audit	$300,000

Section 25 of 2015 House Bill No. 1003 provides guidelines regarding the distribution of funds from the funding pools and requires the State Board of Higher Education to provide reports to the Legislative Management regarding the distribution of funds from the pools.

Deferred Maintenance and Extraordinary Repairs Funding

The 2015 Legislative Assembly, in House Bill No. 1003, approved a deferred maintenance initiative to address maintenance needs at University System institutions. In addition to regular extraordinary repairs funding, the initiative provided funding for major deferred maintenance projects at institutions and for a deferred maintenance funding pool to be distributed to certain institutions. The initiative also reallocated $4 million of unused funding from a $5 million 2013-15 biennium performance funding pool for extraordinary deferred maintenance and campus needs at institutions affected by energy development.

Section 38 of 2015 House Bill No. 1003 requires institutions to provide $2 of matching funds from operations or other sources for each dollar of regular extraordinary repairs funding used for a project. However, an institution may not use a transfer of funds from the deferred maintenance funding pool for the matching funds requirement. The section requires the State Board of Higher Education to provide a report to the Legislative Management regarding the use of extraordinary repairs funding and related matching funds.

The following is a summary of the funding for the deferred maintenance initiative:

	Regular Extraordinary Repairs Funding	Major Deferred Maintenance Projects	Deferred Maintenance Funding Pool Grants	Deferred Maintenance and Extraordinary Needs	Total
Bismarck State College	$417,673	$1,575,000	$700,000		$2,692,673
Lake Region State College	155,367	1,648,423	500,000		2,303,790
Williston State College	197,801			$1,500,000	1,697,801
University of North Dakota	4,411,566	6,000,000	3,500,000		13,911,566
North Dakota State University	2,732,244		3,500,000		6,232,244
North Dakota State College of Science	1,012,379	13,298,000			14,310,379
Dickinson State University	409,078			1,500,000	1,909,078
Mayville State University	358,992		500,000		858,992
Minot State University	899,620			500,000	1,399,620
Valley City State University	408,319	14,289,000			14,697,319
Dakota College at Bottineau	114,007	1,098,789		500,000	1,712,796
Total	$11,117,046	$37,909,212	$8,700,000	$4,000,000	$61,726,258

Reports

The committee received reports from representatives of the University System regarding deferred maintenance funding. The committee learned through July 31, 2016, $5,722,658 has been approved to be distributed from the deferred maintenance funding pool for various projects. The remaining funds to be distributed from the pool will be adjusted due to general fund budget reductions. The committee reviewed the following schedule detailing the distributions:

University System Deferred Maintenance Funding Pool Allocations Through July 31, 2016					
Institution	Original Allocation	Approved Distributions for Projects	Remaining Balance Prior to General Fund Budget Reductions	Adjustment for General Fund Budget Reductions	Remaining Balance
North Dakota State University	$3,500,000	($3,500,000)	$0	$0	$0
University of North Dakota	3,500,000	(1,350,000)	2,150,000	(157,061)	1,992,939
Bismarck State College	700,000	(700,000)	0	0	0
Mayville State University	500,000	(172,658)	327,342	(23,913)	303,429
Lake Region State College	500,000	0	500,000	(36,526)	463,474
Total	$8,700,000	($5,722,658)	$2,977,342	($217,500)	$2,759,842

The committee received reports from the University System regarding the use of matching funds for extraordinary repairs. The committee learned sources of matching funds utilized by institutions include operating funds, carryover funds, and local funds and reserves. Some institutions reduced funding for extraordinary repairs due to general fund budget reductions. The committee reviewed the following schedule detailing the use of extraordinary repairs and matching funding:

Extraordinary Repairs and Matching Funds Used Through June 30, 2016						
Institution	Original Appropriation for Extraordinary Repairs	Required Matching Funds	Total Funding Available	Budget Reduction Adjustment	Funding Used	Remaining Funds
Bismarck State College	$417,673	$835,346	$1,253,019	($749,823)	($70,706)	$432,490
Lake Region State College	155,367	310,734	466,101	(466,101)	0	0
Williston State College	197,801	395,602	593,403	0	(269,233)	324,170
University of North Dakota	4,411,566	8,823,132	13,234,698	0	(13,234,698)	0
North Dakota State University	2,732,244	5,464,488	8,196,732	0	(7,030,603)	1,166,129
North Dakota State College of Science	1,012,379	2,024,758	3,037,137	(1,102,779)	(845,852)	1,088,506
Dickinson State University	409,078	818,156	1,227,234	(409,078)	0	818,156
Mayville State University	358,992	717,984	1,076,976	(1,076,976)	0[1]	0[1]
Minot State University	899,620	1,799,240	2,698,860	(1,200,000)	(318,302)	1,180,558
Valley City State University	408,319	816,638	1,224,957	(568,131)	(206,876)	449,950
Dakota College at Bottineau	114,007	228,014	342,021	0	0	342,021
Total	$11,117,046	$22,234,092	$33,351,138	($5,572,888)	($21,976,270)	$5,801,980

[1]Mayville State University previously transferred $80,000 from its operations line item to its capital assets line item which will be used for extraordinary repairs.

Campus Security

The 2015 Legislative Assembly appropriated $3 million from the general fund for a campus security funding pool to be transferred by the State Board of Higher Education to institutions under the control of the board. Transfers from the pool must be used for security needs at institutions as identified in campus risk and security assessments.

Reports

The committee received reports from representatives of the University System regarding the use of the campus security funding pool. The pool was distributed to campuses proportionally based on total estimated costs at each institution to address surveillance, card access, and lighting needs. A portion of the funding was also used to provide for 24/7 security coverage at certain institutions. The following schedule details allocations from the campus security funding pool:

Institution	Distribution
Bismarck State College	$334,104
Lake Region State College	118,787
Williston State College	371,010
University of North Dakota	448,320
North Dakota State University	675,200
North Dakota State College of Science	222,528
Dickinson State University	86,512
Mayville State University	191,138
Minot State University	421,903
Valley City State University	66,396
Dakota College at Bottineau	64,102
Total	$3,000,000

Similar funding was also appropriated during the 2009-11 and 2013-15 bienniums to install security equipment and for additional security coverage at institutions.

Internal Audit

The 2015 Legislative Assembly provided adjustments to the auditing process for the State Board of Higher Education and institutions and entities under the control of the board. The Legislative Assembly removed three existing internal audit FTE positions and related funding from the University System office. The Legislative Assembly then added six FTE audit positions and related funding to the State Auditor's office to provide audit services to the board and institutions and entities under the control of the board. Section 54-10-30, as enacted by the 2015 Legislative Assembly, provides for the State Auditor to establish a higher education audit division to perform audit-related functions of the board. Subsection 4 of the section provides that the section does not prohibit the board from employing internal audit staff or contracting for internal audit services. The Legislative Assembly appropriated $300,000 from the general fund for a 2015-17 biennium internal audit funding pool to be used for systemwide and campus internal audit purposes as determined by the board.

Report

The committee received a report from representatives of the University System regarding the use of the internal audit funding pool. The committee learned through July 2016, $140,451 of funding had been used from the funding pool. The funding was used to continue the employment of three existing University System internal audit staff from July through October 2015. In October 2015 one of the internal audit staff members was terminated and two internal audit staff members obtained employment with UND. Potential uses of the remaining funding include external consulting services and the payment of salary and benefit costs of the University System Director of Audit Services. The salary and benefit costs of the University System Director of Audit Services are currently paid through assessments charged to institutions.

DICKINSON STATE UNIVERSITY FINANCIAL CONDITION

Section 40 of 2015 House Bill No. 1003 required the State Board of Higher Education to provide a report to the Legislative Management prior to July 1, 2016, regarding the financial condition of Dickinson State University. The report was to detail the financial condition of the institution and plans to improve the institution's financial stability.

Dickinson State University has experienced a decline in enrollment since approximately 2009. The following schedule details the FTE student enrollment at the institution for the Fall 2009 through Fall 2015 semesters:

	2009	2010	2011	2012	2013	2014	2015
FTE enrollment	2,187	2,054	1,959	1,454	1,201	1,176	1,070

As a result of declining enrollment and the impact of energy development on the campus, the institution has received special funding allocations. The 2015 Legislative Assembly appropriated $2 million of one-time funding from the student loan trust fund for campus leadership transition costs. The Legislative Assembly also reallocated $1.5 million of one-time funding from a 2013-15 biennium University System funding pool to Dickinson State University for extraordinary campus needs.

Report

The committee received a report from Dickinson State University regarding the financial condition of the institution. The committee learned net tuition revenue for the institution decreased from $9.9 million during fiscal year 2010 to $6.2 million during fiscal year 2015. The institution is projecting a budget shortfall of $4.1 million to $5.6 million during the 2017-19 biennium.

The committee learned that in response to the budget issues, the institution has been reviewing academic programs and positions and making strategic cuts or consolidating departments where appropriate. The institution is also reducing costs by lowering the minimum number of credits required to be completed to receive a degree in certain programs from 128 to 120 credits.

The committee learned operating expenses for the institution have decreased from $4.5 million in fiscal year 2011 to $3.2 million in fiscal year 2015. The institution has also realized salary savings as result of the reduction in employees. The number of FTE employees at the institution decreased by 49.20 between 2011 and 2014. Most of the positions eliminated were vacant due to retirements or resignations.

STUDENT DISCIPLINARY PROCEEDINGS UNIFORM PROCEDURE

Section 15-10-56, as enacted in 2015 Senate Bill No. 2150, provides that any student enrolled at an institution under the control of the State Board of Higher Education has the right to be represented, at the student's expense, by an attorney or a nonattorney advocate, during any disciplinary proceeding or during any other procedure addressing an alleged violation of the institution's rules or policies. The section does not apply to matters involving academic misconduct.

Section 2 of 2015 Senate Bill No. 2150 requires the State Board of Higher Education to develop and implement a uniform procedure for student and student organization disciplinary proceedings which is applied uniformly to all institutions under the control of the board. The section also requires the board to provide a report to the Legislative Management before July 1, 2016, regarding the status of the implementation of the uniform procedure.

Reports

The committee received reports from representatives of the University System regarding the implementation of a uniform procedure relating to student disciplinary proceedings. The committee learned State Board of Higher Education policy 514 was updated to allow advocates to fully participate on students' behalf in suspension or expulsion proceedings and to allow the right to an appeal on various grounds for at least 1 year. The policy provides a balance between ensuring a nondiscriminatory environment for campus stakeholders and providing procedural due process that ensures fair treatment of students and student organizations involved in campus disciplinary proceedings. Students have the right to appeal a decision in a nonacademic conduct hearing process for at least 1 year following the outcome. The appeals process allows for the introduction of newly discovered evidence relating to the incident.

CAMPUS SEXUAL ASSAULT POLICIES, PROCEDURES, AND SUPPORT SERVICES

House Concurrent Resolution No. 3052, as approved by the 2015 Legislative Assembly, urges the State Board of Higher Education to study sexual assault policies, procedures, and support services available at institutions under its control. The resolution suggests the board develop uniform policies to be implemented at each institution and that the policies be developed with input from health professionals, law enforcement representatives, and members of the Legislative Assembly. The resolution requires the State Board of Higher Education to provide a report to the Legislative Management before July 1, 2016, regarding sexual assault policies, procedures, and support services at institutions under the control of the board.

Reports

The committee received updates from representatives of the University System regarding sexual assault policies, procedures, and supports at University System institutions. The committee learned the University System developed a task force to address federal Title IX and other issues involving campus sexual assault incidents and related proceedings. The task force has assisted institutions in updating policies relating to campus sexual assault incidents and student rights during disciplinary proceedings.

The committee learned new University System students are required to attend awareness and prevention programs to identify potential sexual assaults, to learn how to intervene as a bystander, and how to report sexual assaults to institution officials. University System institution employees are also receiving training on responsibilities to observe, prevent, and report sexual assault.

The committee learned University System institutions have a variety of resources for students and employees affected by sexual assault. There are reporting structures and institutional processes that allow institutions to investigate and hold individuals accountable for sexual misconduct. Services provided to victims include campus escorts, the issuance of no-contact orders, adjustment of the individuals' campus housing or class schedules, and confidential counseling and academic support services. No-contact orders may be issued as a result of a campus disciplinary process or may be issued on a temporary basis while an alleged sexual assault incident is being investigated.

HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following responsibilities:

- A study of family caregiver supports and services pursuant to Section 1 of 2015 House Bill No. 1279.
- A study of behavioral health needs pursuant to Section 7 of 2015 House Bill No. 2048.
- Receive the annual status report from the Autism Spectrum Disorder Task Force pursuant to North Dakota Century Code (NDCC) Section 50-06-32.
- Receive the annual report from the Department of Human Services (DHS) describing enrollment statistics and costs associated with the children's health insurance program (CHIP) state plan pursuant to NDCC Section 50-29-02.
- Receive a report from DHS regarding the autism spectrum disorder voucher program pilot project pursuant to NDCC Section 50-06-32.1.
- Receive a report from DHS regarding the outcomes of the Medicaid and Medicaid Expansion cost-sharing provisions study and the associated legislative recommendations and related draft legislation pursuant to Section 1 of 2015 House Bill No. 1037.
- Receive a report from DHS relating to life skill services, including evidence-based return-to-work model provided for individuals with a traumatic brain injury pursuant to Section 1 of 2015 House Bill No. 1046.
- Receive a report from DHS regarding development activities of the developmental disabilities system reimbursement project pursuant to Section 14 of 2015 Senate Bill No. 2012.
- Receive a report from a statewide family controlled parent-to-parent support organization receiving a grant under Section 19 of the 2015 Senate Bill No. 2012, regarding the use of grant funds pursuant to that section.
- Receive a report from a statewide family-to-family health information and education organization receiving a grant under Section 20 of 2015 Senate Bill No. 2012, regarding the use of grant funds pursuant to that section.
- Receive a report from DHS regarding the adult protective services program, including the effectiveness of the program, information on services and outcomes, and funding by human service region and in total pursuant to Section 23 of 2015 Senate Bill No. 2012.
- Receive a report from DHS regarding its quarterly behavioral health services reports pursuant to Section 26 of 2015 Senate Bill No. 2012.
- Receive a report from DHS regarding the rules adopted to establish and administer the voucher system to assist in the payment of addiction treatment services provided by private licensed substance abuse treatment programs pursuant to Section 4 of 2015 Senate Bill No. 2048.
- Receive a report from the Department of Public Instruction (DPI) regarding mental health training provided by school districts pursuant to Section 5 of 2015 Senate Bill No. 2048.
- Receive a report from DHS regarding the outcomes of the study of statutory references to mental health professionals to determine whether changes in the law may help to more fully utilize these professionals within their scope of practice, as it relates to the responsibilities of DHS to provide services or license facilities together with any recommendations pursuant to Section 1 of 2015 Senate Bill No. 2049.
- Receive a report from DHS regarding eligibility for developmental disability waivers pursuant to Section 1 of 2015 Senate Bill No. 2234.

Committee members were Representatives Kathy Hogan (Chairman), Bert Anderson, Dick Anderson, Chuck Damschen, Alan Fehr, Dwight Kiefert, Gail Mooney, Naomi Muscha, Kylie Oversen, Jay Seibel, Peter F. Silbernagel, and Greg Westlind and Senators Tyler Axness, Dick Dever, Oley Larsen, Judy Lee, and Tim Mathern. Representative Curt Hofstad was a member of the committee until his death in June 2016.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

STUDY OF FAMILY CAREGIVER SUPPORTS AND SERVICES

The committee was assigned a study of family caregiver supports and services pursuant to Section 1 of 2015 House Bill No. 1279. The study was to:

- Identify policies, resources, and programs available for family caregivers and encourage additional innovative and creative means to support family caregivers so they are able to continue to provide in-home support for older adults;
- Include input from stakeholders, including representatives of hospitals, social and clinical providers, advocacy organizations, tribal governments, state and local agencies and institutions, and caregivers;
- Receive testimony on the needs of family caregivers, including designation of caregivers, training, respite services, medical leave policies, and delegation of tasks to nonmedical aides;
- Include an inventory of the resources available to family caregivers; and
- Make any recommendations for administrative actions to support family caregivers.

Current Services

The Department of Human Services Division of Aging Services receives federal funds under the federal Older Americans Act to provide support and services to caregivers in the state. The North Dakota Family Caregiver Support Program is designed to:

- Provide training, supportive services, and respite care to caregivers who provide unpaid care on a 24-hour basis to enable an older adult to remain in their own home;
- Assist grandparents or relative caregivers who are caring for a child age 18 or younger or an adult child with a disability;
- Provide a system of support services to unpaid caregivers including individuals who are caring for an adult age 60 or older, grandparents or other relative caregivers who are 55 years of age or older and who are caring for a child age 18 or younger, grandparents or other relative caregivers who are 55 years of age or older caring for an adult child with a disability between ages 19 and 59, and individuals who are caring for a person with Alzheimer's or a related dementia regardless of their age;
- Enable caregivers to continue to provide care in their homes and community for as long as they choose;
- Provide support and services that safeguard the caregiver's own health and emotional well-being, including information about local services and supports in the community;
- Provide assistance from a trained caregiver coordinator from a human service center to help caregivers assess needs and access support services;
- Provide counseling, support groups, and training services to meet caregiver individual needs for assistance;
- Provide respite care for temporary relief to caregivers who provide 24-hour care; and
- Provide supplemental services to assist with the cost of incontinence supplies and assistive devices such as a shower bench or safety rails.

During fiscal year 2013, 285 unpaid caregivers received 24,856 respite care hours of service. A survey conducted during the fall of 2014 revealed that the respite care program helps keep older adults at home an average of 24 months longer than they could have without the support. In addition, caregivers report that the program assists a caregiver with coping with the challenges of providing 24-hour care in their homes. The 2015 Legislative Assembly provided funding of $1,836,000 of which $274,072 is from the general fund, for programs and services relating to family caregiver and support service.

The Department of Human Services dementia care services program is a state-funded program that provides care consultation and training to caregivers to address the unique and individual needs that arise throughout the various stages of dementia. Eligibility is not based on diagnosis, age, or income and anyone may participate in educational sessions on dementia. The program includes identifying available services within the region; providing information to medical professionals, law enforcement, and the public regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers; assessing the needs of individuals with dementia and their caregivers; training care providers to manage and provide for the care of individuals with dementia; providing consultation services to individuals with dementia and their caregivers; and facilitating the referral of individuals with dementia and their caregivers to appropriate care and support services. The 2015 Legislative Assembly provided funding of $1.2 million from the general fund for dementia care services.

Consultant Services

The committee requested and received approval from the Chairman of the Legislative Management to contract with a consultant to assist with the study of family caregiver supports and services. The specific tasks to be addressed by the consultant included:

1. Identify current public and private resources/services/supports for family caregivers, both public and private, and by region and/or county.
2. Identify barriers/challenges family caregivers experience, which includes the need for training, respite services, medical leave policies, and delegation of tasks to family members and nonmedical aides.
3. Identify best practice models for family caregiver support programs from other states.
4. Identify emerging practices and technology that can enhance caregiver and patient home supports.
5. Provide recommendations to the interim committee.

The committee received proposals from three entities interested in providing consultant services--North Dakota State University (NDSU) Extension Service; Health Management Associates; and Dr. Karin L. Becker. The committee contracted with the NDSU Extension Service. The contract cost was $24,999. The consultant's proposal included:

- Creating a database of current systems for caregiving in North Dakota, including informal, private, and governmental community supports for information and referral, education, advocacy, respite care, case management, and direct service provisions;
- Gathering feedback from stakeholders to identify barriers and challenges from the perspective of family caregivers;
- Reviewing scientific literature and websites to identify successful models across the nation and internationally. In addition, conduct analysis of the key themes of success for caregiving models;
- Reviewing scientific literature and websites to identify emerging practices and technology, including identifying practices and technology that may be particularly relevant to North Dakota with an emphasis on rural needs; and
- Developing recommendations, including best practices for community supports and technology opportunities, policy needs, and top priorities for family caregiver supports and services.

The NDSU Extension Service conducted its study from November 2015 to May 2016 and provided periodic updates to the committee. The final report was presented to the committee in May 2016. The report included information on current resources for family caregivers in North Dakota, barriers and challenges of family caregiving, best practices for family caregiver support programs, emerging practices and technology to enhance caregiver supports, and conclusions and recommendations. The final report identified services and resources for caregivers including the following:

- **Managing caregiving logistics** - Including advocacy services, assistive technology and equipment, care management, and information and referral services;
- **Direct support in providing care** - Including adult day care, dementia care, home health care, homemaker and chore, hospice, and personal care services;
- **Improving caregivers' ability to provide care** - Including meal services, training and education, transportation, and volunteer services; and
- **Fostering caregivers' well-being** - Including emotional support and respite services.

Challenges of caregiving, as identified in the report, include the lack of sufficient respite services, the need for help finding available services and resources, the lack of knowledge and training relating to providing care, caregiver stress and burdens, and financial burdens of caregiving. The best practices for family caregiver support programs include the following:

- **Availability of help and support** - Including telephone-based psycho-educational interventions, virtual care, and community nurses;
- **Financial cost of care and funding** - Including sliding fee scales and vouchers, increasing access to paid family medical leave, and long-term care planning;
- **Knowledge and ability to provide needed care** - Including interactive training, comprehensive discharge planning, long-term educational programming, and preventive care; and
- **Respite and well-being of caregiver** - Including in-home care, and health education programs.

Emerging practices and technology to enhance caregiver supports include the following:

- **Availability of help and support** - Including person-centered care, mobile adult day care, working with college students, technology, socially assistive robots, and smart wear;
- **Financial cost of care and funding** - Including telemedicine reduced hospitalization, co-op models, and tax credits for caregiving;
- **Knowledge and ability to provide needed care** - Including home visits upon discharge, virtual learning modules in hospital waiting rooms, use of social media to increase awareness, training for employers about eldercare, and mobile apps for long-distance care; and
- **Respite and well-being of caregiver** - Including online emotional support groups and the Behavioral Risk Factor Surveillance System's caregiver module to detect caregiver burden.

The study concluded that:

- High costs of care and lack of funding for services to support caregiving provides challenges for caregivers;
- Both caregivers and stakeholders have identified insufficient access to respite care as a major gap of service;
- Caregivers have identified difficulty with finding, connecting to, and navigating available services and resources;
- Family caregivers lack training relating to logistics and management of caregiving, including a provision of support in activities of daily living; and
- Both caregivers and stakeholders have identified challenges with a lack of available and appropriate services, especially in rural regions of the state.

The final report included the following recommendations:

Overarching Recommendations

- Develop a family caregiving task force that includes caregivers, service providers, and community leaders to develop recommendations to address service gaps, distance, population density of those needing service, culture, and other caregiving challenges; including a review of current, best, and emerging practices; and recommendations to close service gaps in selected areas; and to address unique concerns relating to rural caregiving;
- Encourage marketing and outreach efforts to increase awareness of current programs and services available;
- Consider changes to eligibility criteria, or increase use of funding for individuals not currently financially eligible;
- Increase service availability, including respite care, care management, training and education, emotional support, volunteer programs, and various direct care supports, including adult day care, homemaker/chore, dementia care, and personal care;
- Increase resources to address caregiver well-being, including preventative, screening, and intervention care; and
- Develop supports and guidelines to streamline the integration of state-sponsored services and specialized programs for veterans and Indian tribes.

Improving Avenues for Sustainable Funding for Family Caregivers and Programs That Support Them

- Consider legislation that provides tax credits to employers in the private sector for providing a 12-week paid family medical leave, including employees that take leave from work to care for a spouse, child, or parent with a serious health condition;
- Expand the minimum requirements of the federal Family and Medical Leave Act to increase the number of individuals that may access benefits by adjusting eligibility requirements, expanding the range of family caregiving relationships, or increasing the amount of unpaid leave that may be taken;
- Review budget reductions, including homemaker services;
- Consider reimbursement options for telemedicine and other technologies that have reduced repeated hospitalizations and allow long-distance caregivers to be included with health care visits;
- Consider adjusting the sliding fee scale for state-funded service payments for the elderly and disabled (SPED) programs that provide services to help older adults or physically disabled persons with difficulty completing tasks, so that they are able to live at home independently. In addition, consider adjustments that account for cost of living and inflation, and eases the financial burden of lower-income older adults;

- Educate employers regarding the needs of family caregivers, including the importance of developing policies and strategies that support, retain, and reduce the burdens and stress of employees that are engaged in caregiving; and
- Develop a plan to expand long-term care insurance coverage across the state, including educating citizens of the benefits for long-term care insurance, expanding tax credits to individuals that purchase coverage and employers that provide a level of benefit toward the insurance, and providing state employees with a subsidized long-term care insurance plan.

Increasing Access to Respite Care

- Review the feasibility of applying for federal grants from the Lifespan Respite Care Program to advance objectives, including expanding and enhancing respite services in the state, improve coordination and dissemination of respite services, streamline access to programs, fill gaps in service where necessary, and improve the overall quality of the respite services currently available;
- Expand the availability of respite care by training college students and other volunteers to allow relief for family caregivers;
- Evaluate best-practice training tools, including respite education and support tools for family caregivers. Evaluation should include identifying tools that are original and professionally designed to train individuals seeking to become a respite volunteer. In addition, the evaluation should include identifying tools that are appropriate for use within many settings, including schools, veterans' organizations, hospitals, senior centers, and faith communities;
- Promote awareness of the Family Caregiver Support Program to ensure it is fully utilized across the state;
- Create a directory of local respite care available to family caregivers. This directory should be easy to navigate and available online and in print. Moreover, it should be updated on a regular basis; and
- Assess the utilization of facility-based respite care to determine awareness and acceptance by family caregivers.

Improving Resources to Help Family Caregivers Find, Connect to, and Navigate Available Services

- Identify marketing and communication strategies that will promote awareness and benefit the Aging and Disability Resource-LINK and the statewide options counseling system. Strategies should be developed to increase referrals and connect family caregivers with needed services;
- Develop a caregiver resource center website within the Aging and Disability Resource-LINK, or any appropriate organization, to increase access to existing programs and services for caregivers. The website may include relevant online resources, training, support, respite, and planning tools for family caregiver needs. In addition, the website may be a caregiver portal that hospitals, clinics, and other caregiver stakeholders promote;
- Develop a comprehensive guide of caregiving for North Dakota caregivers similar to publications created in other states, including the United Way Caregivers Coalition's Pathways for Caregivers from United Way of Northern New Jersey;
- Explore current care coordination improvement efforts within the state to determine if there are ways to better support the needs of family caregivers that are assisting care recipients transition from hospital to home, rehabilitation, or hospice. In addition, encourage public and private care coordination to use evidence-based care coordination programs that include caregiver assessments;
- Identify ways to increase communication, awareness of services, and collaboration between organizations, including health care, social services, and aging services; and including county and regional organizations, to identify local family caregiver resources, and increase referrals; and
- Provide public awareness to increase involvement with caregiving beyond the primary caregiver and to enhance greater understanding of family caregiving issues.

Increasing Training and Education for Informal and Professional Caregivers

- Provide in-person instruction for medical and nursing tasks that a caregiver will need to provide at home, including medication management, injections, and wound care and transfers. In addition, require instructions to be inclusive of both care recipients discharged from a facility and individuals that have not been discharged from a facility, but may need this type of instruction;
- Ensure training is available in-person and online to meet various family caregiver training needs, including caregiving basics, managing care of others, financial caregiving, legal issues, medical and mental health support, communication, physical tasks of caregiving, caregiver self-care, and end-of-life issues;

- Identify partnerships, including universities and health care systems, that may collaborate to develop and deliver family caregiver track training;
- Increase the availability of the Powerful Tools for Caregivers Program statewide, and other evidence-based training programs that are effective;
- Ensure information, including schedules for a training program, are aggregated and accessible to family caregivers;
- Develop opportunities for family caregiver peer supports, including a mentoring program with former caregivers, training events, and outings for both caregiver and care recipients;
- Provide for the development of in-person and online support groups for caregivers of older family members; and
- Identify the feasibility of developing a professional training track for employees that deliver care. The training may include a small fee to help cover the costs of sustaining and updating a training program.

Closing Gaps in Caregiver Support Services in Rural Areas

- Support a statewide direct care workforce initiative to increase the number of individuals that are interested in caregiving professions, specifically in rural areas;
- Identify ways telehealth may address the needs of rural family caregivers and their care recipients, including plans for sustainable funding;
- Consider developing a pilot project for a mobile adult day care model in rural communities;
- Develop volunteer networks to support the needs of rural caregivers, including identification of available funding and administrative hosting that may be needed to recruit, orient, train, supervise, and coordinate the volunteers;
- Provide programs that help family caregivers organize caregiving tasks through platforms, including Lotsa Helping Hands, a social media website which allows caregivers to calendar a care recipients task needs and family/friends to sign up for performing specific tasks. Share the Care is a similar publication that can be adopted by caregivers and friends, health professionals, faith communities, and businesses;
- When county social services are the only provider of a key service (such as respite or personal care), determine ways to provide assistance so that they can continue to provide services to eligible clients and to expand services, if possible, to private-pay clients;
- Provide funding for a pilot project that will include careful evaluation studies, including best practices for caregiver services targeting rural areas and may lead to effective and cost-efficient solutions; and
- Provide funding for innovative technologies that allow older adults to live independently for longer periods of time, including developing technologies that support virtual caregiving from longer distances to allow seniors living in rural areas to communicate with a caregiver living in urban regions or out of state.

Hospital Discharge Policies

The committee also reviewed hospital discharge policies. The committee received information from AARP regarding draft model legislation which is referred to as the Caregiver Advise, Record, Enable (CARE) Act to address supports for family caregivers during a patient's transition from a hospital. The committee learned 30 states, the District of Columbia, and two territories have passed legislation similar to the CARE Act. Other rural states include Wyoming, Alaska, Utah, and Nebraska. The 2015 Legislative Assembly considered similar legislation in House Bill No. 1279; however, the bill was not approved. The committee compared the provisions of the bill to provisions in similar bills approved in Nevada, Oregon, and Utah. The committee learned a survey conducted by AARP in October 2015 identified family caregiver respondents expressed the need for family caregivers to receive more specific information and directions from a hospital when a patient is released, more hospital awareness regarding the level of care a patient needs after being discharged, and more information regarding who to call or ask when a family caregiver needs assistance. The CARE Act model recommends the following:

- **Designation of the Caregiver in the Medical Record** - Allows a patient or legal guardian the ability to designate a caregiver when being admitted to the hospital.
- **Notification to the Caregiver of Discharge** - Provides for a hospital to notify a family caregiver if a patient is being discharged or transferred to a different facility.
- **Instruction of Aftercare Tasks** - Creates a framework for a family caregiver to receive instructions for tasks the family caregiver will perform once a patient is discharged from the hospital.

The committee received information from hospital providers regarding current regulatory requirements for hospital discharge planning, including information relating to the current discharge planning process. The committee learned hospitals already have discharge policies that are governed by internal policies and the State Department of Health. In addition, hospitals are required to follow rules and standards for discharge planning, which are established by the federal Centers for Medicare and Medicaid Services (CMS) and the federal Joint Commission.

When a patient is ready for discharge, the hospital provides the patient and family a written copy of discharge instructions. A nurse reviews the instructions and the medications prescribed. The patient is also encouraged to allow the hospital to inform and include a family member or caregiver when discussing instructions and other information. The patient does have the right to request that a family member or caregiver not be notified. The committee learned CMS, through its Conditions of Participation rule, require the following to be documented in a patient's medical record:

- Patients have a written discharge plan developed;
- Patients have specific discharge instructions provided in writing;
- Patient's goals and preferences for their discharge plan are taken into account;
- Patient's caregivers and support persons are active partners in the discharge plan and care;
- Hospitals consider the availability and capability of the caregiver to provide home care;
- Discharge planning begins within 24 hours of admission;
- Discharge planning process is completed prior to discharge; and
- Discharge instructions are presented in a way that the patient and the caregiver can understand.

Other Information

The committee reviewed other information relating to the study of family caregiver supports and services from other agencies and organizations, including DHS, the Department of Labor and Human Rights, AARP, and hospital providers. The information related to:

- Family caregiver supports and services in the United States and in North Dakota, including information of a study conducted by the National Alliance for Caregiving and AARP, tasks performed by caregivers in North Dakota, and policy solutions to address family caregiver supports and services; and family support and health care discharge planning;
- Family caregiver services provided by DHS, including information on the Family Caregiver Support Program, dementia care services program, family home care, family personal care; and the Aging and Disability Resource Center service process and number of clients served;
- State and federal employment-related laws that support and protect family caregivers;
- Hospitals using accountable care organizations; and
- Funding for North Dakota's long-term care continuum services, and information regarding the SPED sliding fee schedule.

Testimony from Interested Persons

The committee received information from interested persons, including providers, organizations, and individuals relating to the study of family caregiver supports and services. Concerns and recommendations provided to the committee include:

- The need for a sustained commitment to improving the system of caregiving in North Dakota;
- Concern regarding the lack of understanding by patients and their caregivers of hospital discharge instructions;
- The need for better communication between hospital staff and patients relating to discharges;
- Concerns regarding general fund budget allotment changes to DHS for reimbursements of homemaker services and Child Care Aware of North Dakota grants and the negative effect the reductions will have on services;
- Concerns regarding qualified service provider payment levels for homemaker services provided to assist individuals to remain in their homes and avoid more expensive levels of care;
- Improve public awareness of services available through the aging and disability resource center, including providing sufficient funding for the services;

- Improve the system of caregiving by creating policy initiatives that allow individuals to care for an aging parent without leaving the workforce, creating system changes within the health care and health and human services systems to promote coordination and focus in transition homes, and supporting an environment that allows for creativity to meet the demands for caregiving;
- Review the benefits of assistive technology for family caregiver supports and services; and
- Provide assistance that will help a family or caregiver manage patient care and promote communication between medical professionals and caregivers relating to family support and health care discharge planning.

Prioritizations

The committee received information from the NDSU Extension Service, DHS, and AARP regarding suggested prioritization of recommendations for the study of family caregiver supports and services. The committee learned that many recommendations may need to be implemented over several years. The following recommendations were identified as priorities:

- Create a statewide family caregiver task force that will focus on service gaps in rural areas, including funding for pilot projects developed by the task force;
- Support training programs, including caregiver basics, managing care of others, financial and legal issues, caregiver well-being, physical tasks, and end-of-life issues;
- Restore funding for homemaker services reduced as a result of 2015-17 biennium budget reductions and update the sliding fee schedule for the SPED program to include inflationary increases;
- Promote awareness of the Family Caregiver Support Program and other services that provide respite options for family caregivers to ensure it is fully utilized across the state;
- Review the feasibility of applying for the federal Lifespan Respite Care Program grant to address gaps in respite services;
- Support the statewide direct care workforce initiative to increase the number of individuals seeking a caregiving profession, including rural areas;
- Increase available respite care services by training college students and volunteers;
- Improve services that assist caregivers with navigating available resources, including marketing and communication strategies to promote the Aging and Disability Resource-LINK and statewide options counseling system, create a caregiver resource center within the Aging and Disability Resource-LINK to increase access to existing programs and services, and create a comprehensive guide to caregiving, including resources, training, supports, respite, and planning tools;
- Approve the CARE Act to address supports for family caregivers during a patient's transition from a hospital.

Committee Recommendations

The committee recommends House Bill No. 1038 relating to family caregiver supports and services. The bill provides appropriations, including one-time funding of $197,580 from the general fund to the NDSU Extension Service for establishing a pilot project to expand local training programs to include family caregiver training, $200,000 of federal funds to DHS to administer the Lifespan Respite Care Program, and $1,535,000 from the general fund to DHS to provide an inflationary adjustment to the SPED sliding fee schedule. The bill also directs DHS to establish and promote a caregiver resource center website, to review long-term care services, and to provide recommendations to the Legislative Management of options to increase the number and level of services and funding provided for home- and community-based services.

The committee recommends House Bill No. 1039 to require hospitals to establish and maintain written discharge policies.

STUDY OF BEHAVIORAL HEALTH NEEDS

The committee was assigned a study of behavioral health needs pursuant to Section 7 of 2015 Senate Bill No. 2048. The study was to include consideration of behavioral health needs of youth and adults and access, availability, and delivery of services. The study was to include a review of services related to autism spectrum disorder. The study was to include input from stakeholders, including representatives of law enforcement, social and clinical service providers, education, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court, tribal government, and state and local agencies and institutions. The study was to also include the monitoring and reviewing of strategies to improve behavioral health services implemented pursuant to legislation enacted by the

64th Legislative Assembly and other behavioral health-related recommendations presented to the 2013-14 interim Human Services Committee.

In addition, Section 5 of 2015 Senate Bill No. 2048 requires DPI to provide a report to the Legislative Management regarding mental health training provided to school districts. The committee was assigned to receive this report.

Background

2013-14 Interim Human Services Committee - Study of Behavioral Health Needs

During the 2013-14 interim, the Human Services Committee was assigned a study of behavioral health needs pursuant to Section 1 of 2013 Senate Bill No. 2243. The study included consideration of behavioral health needs of youth and adults and consideration of access, availability, and delivery of services. The study included input from stakeholders, including representatives of law enforcement, social and clinical service providers, education, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court, tribal government, and state and local agencies and institutions. The committee contracted with Schulte Consulting, LLC, to assist with the behavioral health needs study. The consultant's report identified six primary opportunities to better address behavioral health needs of youth and adults in North Dakota, which included service shortages, workforce expansion, insurance coverage changes, changes to the structure and responsibilities of DHS, communication improvement, and data collection and research expansion.

Department of Human Services

The Department of Human Services provides behavioral health services through its Behavioral Health Services Division, the State Hospital, and the eight human service centers located throughout the state. The Behavioral Health Services Division is responsible for overseeing a statewide network of substance abuse and mental health treatment, recovery support services, mental health promotion, and substance abuse prevention services. During the 2013-15 biennium, the division licensed 81 substance abuse treatment programs, 43 driving under the influence education programs, 8 regional human service centers, and 6 psychiatric residential treatment facilities for children and adolescents. The State Hospital, located in Jamestown, provides traditional and secure services to adult patients. Traditional services include short-term acute inpatient psychiatric and substance abuse treatment, intermediate psychosocial rehabilitation services, forensic services, and safety net services for the adult patients. Secure services include inpatient evaluation and treatment services for sexually dangerous individuals. The State Hospital has available 304 beds, including 105 beds for addiction services at the Tompkins Rehabilitation and Corrections Center; 123 beds for acute inpatient and intermediate psychosocial rehabilitation services; and 76 beds in the secure services unit (sex offender program). The department operates eight regional human service centers in Williston, Minot, Devils Lake, Grand Forks, Fargo, Jamestown, Bismarck, and Dickinson. The human service centers core services include aging services, developmental disabilities, vocational rehabilitation, child welfare services, children's mental health, serious mental illness, acute clinical services, substance abuse services, low-intensity sex offender treatment, and crisis/emergency response services. The human service centers served 11,686 clients in the first quarter of fiscal year 2016.

Department of Corrections and Rehabilitation

The Department of Corrections and Rehabilitation (DOCR) provides behavioral health services through its Division of Adult Services and Division of Juvenile Services. The Division of Adult Services provides for the development of personal growth and rehabilitation programs for inmates. Mental health programs are provided to assist inmates with mental health concerns through counseling, psychological services, and psychiatric services. In addition, the State Penitentiary is a licensed addiction treatment center which staffs licensed addiction counselors, licensed social workers, and paraprofessionals to assist inmates in overcoming addictions and personal problems. The State Penitentiary has allocated eight beds to serve inmates with special mental health and vulnerability concerns who cannot reside in general housing. The James River Correctional Center has a 26-bed mental health unit that allocates additional staff resources to managing the behavior and treatment of offenders with serious mental illness, chronic suicidal tendencies, or vulnerability concerns who cannot reside in general housing. The Division of Juvenile Services includes the Youth Correctional Center and eight regional community-based services offices located throughout the state. The division provides comprehensive case management, treatment, and supervision programs for troubled adolescents. Treatment programs for juveniles include group counseling, individual counseling, substance abuse education, cognitive-behavioral classes, recovery and relapse prevention counseling, grief/loss counseling, victim impact programming, security intervention (gang) classes, physical fitness, spirituality and health services, and work.

Funding

The 2015 Legislative Assembly provided funding as follows for programs and services relating to behavioral health needs for the 2015-17 biennium:

	General Fund (In Millions)	Other Funds (In Millions)	Total (In Millions)
Department of Human Services			
Behavioral Health Services Division	$9.2	$11.0	$20.2
State Hospital - Traditional services	50.0	21.5	71.5
State Hospital - Secured services	13.5		13.5
Human service centers	117.4	81.3	198.7
Total Department of Human Services	$190.1	$113.8	$303.9
Department of Corrections and Rehabilitation			
Division of Adult Services	$8.6		$8.6
Division of Juvenile Services	4.0	$2.1	6.1
Total Department of Corrections and Rehabilitation	$12.6	$2.1	$14.7

Behavioral Health-Related Information

The committee reviewed behavioral health-related information including an overview of behavioral health, an overview of a behavioral health system of care, key legal obligations related to behavioral health services, the DHS behavioral health services delivery system, including information on the substance abuse disorder system, regional interventional and emergency services continuum, adult behavioral health services, children's behavioral health services, and a report on mental health training for school districts, and other committee reports.

Behavioral Health - Overview

The committee learned mental illness and substance abuse disorders are considered interrelated brain-based diseases. Deinstitutionalization; availability of drugs and alcohol; and the lessening of traditional family, community, and social supports have increased behavioral health issues in North Dakota. The state is lacking a consistent system to ensure people with mental health and substance abuse disorders receive effective medical and psychosocial interventions. In addition, mental health and substance abuse treatment systems may have competing philosophies relating to the use of medicines, the role of self-help supports, and the role of various health professionals. Each system identifies the disease it treats as primary and any symptoms from the other disease as secondary, and as a result, each system focuses only on one disease. Dually diagnosed patients may respond poorly to treatments because conditions from the other disorder may not be recognized or managed appropriately. The use of medications, psychosocial interventions including therapy and community supports, the level and duration of services, and the setting of service delivery needs should be specific for each individual's needs. Evidence-based medication treatment and psychosocial interventions exist, but are not available for routine clinical care of mental health and substance abuse disorders. Needs include access, training, insurance coverage, quality measurement, and consistent care. Federal, state, and local systems are now changing treatment of behavioral health conditions from integrated funding streams, research, and administration of treatment into blended systems which consider relationships and overlap between conditions and its impact on other medical conditions.

Behavioral Health System of Care - Overview

The committee learned behavioral health disorders are common, treatable, and often not accessible because of stigma and culture, shortages of providers and maldistribution, low payment rates, and a lack of integration across the care system. Behavioral health service settings include specialty behavioral health clinics and hospitals, outpatient independent providers, health clinics, hospitals, long-term care centers, mutual support groups and peer-run organizations, schools and educational settings, jails and prisons, other community settings, and home-based services. Treatment services include assessment and diagnosis, counseling and psychotherapy, medications, and supportive services, including care management and coordination. Behavioral health service providers include specialty behavioral health providers, including psychiatrists, psychologists, specialty nurses and social workers, addiction counselors, and other master-level licensed behavioral health therapist services; primary care physicians, including family medicine, pediatrics, internal medicine, obstetrics and gynecology, and emergency services; social and human services, including school counselors, criminal justice professionals, and aging and disability services; and informal volunteers, including support groups and peer counselors.

The committee learned a 2009 report by the Congressional Research Service provided actions that are needed for improving behavioral health services, including routine and systematic use of evidence-based practices, resolving the workforce shortage issues, ensuring access to care by removing financial barriers, coordinating mental health care with general health care and social services, and developing a way to systematically measure and improve the quality of care delivered. Measuring the quality of mental health care requires collection of data for many measures over a sustained period of time. The measures need to reflect patterns, which include the process of obtaining care and the outcome of the care received.

Key Legal Obligations Related to Behavioral Health Services

The committee received information from the Bazelon Center for Mental Health Law, Washington D.C., regarding legal obligations related to behavioral health services. The committee learned the legal framework for behavioral health services includes the United States Supreme Court ruling in the 1999 Olmstead v. L.C. case; Medicaid and the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services; the federal Mental Health Parity and Addiction Equity Act of 2008; and the federal Affordable Care Act of 2010. The 1999 Supreme Court ruling determined that the Americans with Disabilities Act requires states to provide community-based treatment for persons with mental disabilities when a state's treatment professionals determine that such placement is appropriate; affected persons do not oppose such treatment; and placement can be reasonably accommodated, considering resources available in the state and the needs of others with mental disabilities. The ruling included protecting at-risk people with disabilities that live in the community but have under-treated behavioral health conditions that place them at serious risk of institutionalization. In addition to state institutions, the ruling also applies to privately owned and operated facilities in the state's service delivery system. States must provide EPSDT services to Medicaid-eligible children and youth under age 21. States must also provide necessary health care, diagnostic services, treatment, and other measures to correct physical and mental illnesses and conditions regardless of whether services are specifically covered in the state's Medicaid plan. Early and Periodic Screening, Diagnostic, and Treatment also requires states to provide intensive home-based services to Medicaid-eligible children with a disability that affects behavior. The federal Substance Abuse and Mental Health Services Administration determined these services include intensive care coordination, peer services, intensive in-home services, respite care services, mobile crisis response and stabilization services, flex funds, trauma-informed treatments, mentoring, supported employment, and consultative services. The federal Mental Health Parity and Addiction Equity Act of 2008 provides that private health insurance plans that cover services for individuals with mental health or substance abuse disorders must be equitable with coverage for other health conditions; limits on coverage for these plans are not allowed to be stricter for behavioral health services than for other services; copayments and deductibles are not allowed to be higher for behavioral health services than for other services; and a plan that includes out-of-network coverage for physical health care, must include out-of-network coverage for behavioral health care.

Department of Human Services - Behavioral Health Services Delivery System

The committee learned DHS provides behavioral health services through its policy division, which is the Behavioral Health Services Division, and a services division, which includes the State Hospital, and the eight regional human service centers. The department's behavioral health system is based on the following values:

- **Recovery-oriented systems** - Includes systems of health and human services that affirm hope for recovery, exemplify a strength-based orientation, and offer a wide spectrum of services and supports aimed at engaging individuals with mental health and substance abuse conditions into care and promoting their resilience and long-term recovery from which they and their families may choose.
- **Person-centered care** - Based on the individual's self-identified hopes, aspirations, and goals, builds on the individual's own assets, interests, and strengths, and is carried out collaboratively with a broadly defined recovery management team which includes formal care providers and others who support the individual's own recovery efforts and process, such as employers, landlords, teachers, and neighbors.
- **Integrated care** - The collaboration between behavioral health and primary care providers to ensure the most effective and informative care for the consumer. Integrated care focuses on consumers and family members as partners in the health care process.
- **Trauma-informed** - An approach to the delivery of behavioral health services including an understanding of trauma and an awareness of the impact it can have across settings, services, and populations.

The Behavioral Health Services Division is responsible for overseeing a statewide network of substance abuse and mental health treatment, recovery support services, mental health promotion, and substance abuse prevention services. The committee learned the Behavioral Health Services Division provides leadership for the planning, development, and oversight of the state's behavioral health system by improving access to services, addressing behavioral health workforce needs, developing policy, and ensuring quality services are available for those with behavioral health needs. The policy roles of the Behavioral Health Services Division include:

- **Health and safety** - Licensing, certification, administrative rule updates, contracts, law and policy changes, training and technical assistance, data-driven planning, partners, and compliance requirements.
- **Access to services** - Priority status, partnerships, grant funding and request for proposals, policy and law changes, payments and partnership with payers including Medicaid, and training and technical assistance.
- **Quality** - Outcome-based contracts, best practice requirements, training and technical assistance, evaluation and data collection, process and outcome measures, prevention resource and media center, analysis of system changes, and fidelity.

The core functions of the Behavioral Health Services Division include:

- **Regulation** - Substance abuse licensing, opioid treatment program licensing, human service center licensing, psychiatric residential treatment facility licensing, Driving Under the Influence seminar program licensing, and administrative rules.
- **Administration** - Mental health block grants, substance abuse block grants, community and tribal prevention, problem gambling, brain injury, FirstLink 2-1-1 services, and the Robinson Recovery Center.
- **Workforce development** - Training and technical assistance, behavioral health conferences, mental health first aid, and partnerships with institutions and consortiums.
- **Prevention and promotion** - Parents Listen, Educate, Ask, Discuss program, prevention resource and media center, Speaks Volumes program, tribal prevention programs, community prevention programs, and prescription drug take back.
- **Partnership** - Mental Health and Substance Abuse Planning Council, Governor's Prevention Advisory Council, State Epidemiological Outcomes Workgroup, Brain Injury Advisory Committee, Problems Gambling Advisory Council, and ND Cares.

The state's delivery system provides, directly or through contracts, a full continuum of integrated behavioral health services, including:

- **Substance abuse disorder services** - An integrated and full continuum of psychotherapeutic and rehabilitation services with priority given to Schedule IV drug users, pregnant females, and uninsured individuals.
- **Extended care services** - Integrated and full continuum of medically necessary treatment and rehabilitative services for individuals with severe and persistent mental illness to enhance opportunity for:

  Productive community living - 24-hour emergency care and access to hospitalization, assertive community treatment, and intensive case management;

  Active chronic disease management - Medication management and therapy services including addiction therapy; and

  Other services - Psychosocial rehabilitation and day treatment, peer and family support services, supported employment, supported housing, and various levels of residential environments.
- **Specialized children's services** - An integrated and full continuum of treatment and support services for severely emotionally disturbed children including mental health, substance abuse, social, educational, and juvenile services.

Substance Abuse Disorder System

The committee learned the goal of the substance abuse disorder system is to provide a full range of high-quality services to meet the needs of North Dakotans. In addition, the system should have prevention, intervention, treatment, and recovery support services; include activities and services that go beyond traditional interventions; and coordinate, communicate, and link with primary care because of the prevalence of co-morbid health, mental illness, and substance abuse disorders. The primary goals of the DHS Behavioral Health Division's substance abuse prevention system are to support local-level effective substance abuse prevention, develop and promote a substance abuse prevention system, and to develop an integration of the behavioral health system. Priorities include preventing underage drinking, adult binge drinking, and prescription drug abuse. The priorities are determined through ongoing data compilations provided by the state epidemiological outcomes workgroup. Factors that contribute to the development of substance abuse include retail availability, social availability, economic availability, enforcement, promotion, community norms, and individual factors.

The committee learned an addiction is a primary, chronic disease of the brain's reward, motivation, memory, and related circuitry. Dysfunction in the circuits may lead to characteristics of biological, psychological, social, and spiritual manifestations. This dysfunction may cause an individual to pursue substance abuse or other behaviors as a pathological reward or relief. Addiction may involve cycles of relapse and remission, and without treatment and recovery activities, addiction is progressive and may result in disability or premature death. Treatment is the use of any planned, intentional intervention in the health, behavior, and personal or family life of an individual suffering from alcoholism or from another drug dependency designed to enable the affected individual to achieve and maintain sobriety, physical and mental health, and a maximum functional ability. Components of treatment include physical and psychiatric evaluations, detoxification, counseling, self-help, treatment for co-morbid physical or behavioral complications, and medication-assisted therapy. A chronic disease management program may include a treatment plan with regular monitoring,

coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools.

The committee learned there are 57 licensed private adult substance abuse treatment programs in the state. The public service delivery for chronic disease management includes medication for withdrawal and to prevent relapse and diminish cravings, outpatient counseling, residential treatment, care coordination and case management, supported employment, home- and community-based services, and social supports. All eight regional human service centers provide substance abuse disorder treatment services, and contract for multiple residential levels of care. The level of services vary at each location for other substance abuse disorder services, including social detoxification, medical detoxification, residential treatment, adolescent-supported housing, adolescent residential treatment, and population-specific residential treatment. Each regional human service center and the State Hospital determine the services to provide based on identified needs and the number of individuals seeking services at that location, and by reviewing services private providers may be offering in the region. Each region has regional advisory councils that discuss services that may be lacking. In addition, the level of funding determines availability of services at each location. The committee learned a lack of access to community-based services, including residential treatment, is contributing to increasing incarceration rates. The committee learned 75 percent of individuals incarcerated in the state meet criteria for an active substance abuse disorder diagnosis. The committee learned DOCR created a correctional behavioral health workgroup that includes DOCR, DHS, probation and parole officers, and jail administrators. The goal of the workgroup is to make recommendations to the 65th Legislative Assembly regarding the improvement of access to behavioral health care for individuals involved with the state's criminal justice system.

Regional Intervention and Emergency Services Continuum

The committee learned Section 1913(c)(1) of the federal Public Health Service Act requires community mental health centers to provide 24-hour crisis services and screening for potential admission to a state mental health facility. North Dakota Century Code Section 25-03.1-04 requires screening and admission of an individual to the State Hospital to be performed by a regional human service center, and if appropriate, treated locally. This "gatekeeper" function ensures services are provided in the least restrictive and community-based environment. The emergency services continuum requires the capacity to prevent, respond, de-escalate, and followup from a crisis across a continuum of services. Emergency services include:

- **Rapid assessment and triage** - Which includes a continuum of regional intervention services, including an open-access model of care. Regional human service centers are implementing open-access models of care. An open-access model of care is an immediate assessment of an individual when they enter a regional human service center so that the level of care may be determined. The level of care may include emergent, urgent, or routine care.
- **Crisis line** - Which includes a 24-hour crisis line that provides immediate telephone support for the resolution of a behavioral health crisis. There were 1,400 crisis calls in the second quarter of fiscal year 2016.
- **Crisis services** - Which includes immediate, short-term help to individuals experiencing a crisis. There were 10,981 documented crisis and emergency services in the second quarter of fiscal year 2016.
- **Mobile crisis services** - Which includes behavioral health emergency responses of prompt and effective support to resolve a crisis and defer hospitalization. Mobile crisis services are provided in the Southeast region of the state. There were 105 interventions that averaged 113 minutes each in the second quarter of fiscal year 2016. Of the 105 interventions, 103 resulted in crisis resolutions and 2 required hospitalization.
- **Crisis stabilization** - Which includes crisis residential units and respite or safe bed services. A crisis residential unit is a residential service that provides emergency treatment as an alternative to hospitalization. A respite or safe bed service is a residential service that provides a safe bed to individuals in crisis that do not require admission to a treatment facility. There were 1,918 individual services in a crisis residential unit or respite care unit in the second quarter of fiscal year 2016. Crisis stabilization units are provided in seven regions of the state. The North Central region does not have a crisis stabilization unit.
- **Emergency room collaboration** - Which includes human service center contracts with local community hospitals to provide emergency psychiatric services. Local community hospital contracts are active in five regions of the state. There were 116 individual services in the second quarter of fiscal year 2016. The majority of State Hospital admissions result from individuals that do not stabilize at a local community hospital.

North Dakota Century Code Section 25-03.1-20 provides a person may be committed for involuntary treatment of mental illness only if a district court finds the individual is a person requiring treatment. A person requiring treatment includes a person that is mentally ill or chemically dependent, and if not treated, would be at serious risk of harm to self or others. There were 330 admissions to the State Hospital in the second quarter of fiscal year 2016. In addition, there were 219 petitions for court-ordered treatment and 27 petitions for court-ordered medication.

Adult Behavioral Health Services

The committee reviewed adult behavioral health treatment services. Adult behavioral health treatment services address health, home, and community issues. Treatment services relating to restoring health issues include medication management services, intensive case management, psychotherapy services, integrated dual disorders treatment, and restoration to competency. Treatment services relating to restoring home issues include skills training and case aide services, residential and transitional living services, supported living arrangements, specialized homeless case management, and supported employment services. Treatment services relating to restoring community issues include regional recovery centers, peer support services, sex offender treatment, and family therapy. Adult behavioral health services provided by the human service centers include specialized recovery and rehabilitation services and specialized residential and transitional treatment. Services provided by the State Hospital include specialized inpatient rehabilitation treatment, specialized transitional treatment, and specialized residential treatment for sex offenders. The committee reviewed adult behavioral health services for the second quarter of fiscal year 2016. The committee learned 11,613 adult mental health individuals received services in an identified program of care, which included 5,284 individuals that received contracted residential services, and 1,702 individuals with severe mental illness that received 16,471 services. There were 11,358 episodes of psychotherapy from clients that received residential services and 69,384 case management services documented. There were 2,918 adult mental health individuals that received contracted transitional living services.

Children's Behavioral Health Services

The committee received information from various organizations regarding children's behavioral health. The early childhood period for an individual involves development that is greater than any other stage of human development. Development includes gross motor skills, fine motor skills, speech, and social emotional development. Delays in development can occur for various reasons, which include genes, genetic syndromes, trauma in utero, trauma during delivery, and trauma during childhood. Trauma may include vascular trauma, physical trauma, neglect, and toxic exposures. Mental health issues for children ages 0 through 5 is determined by a child's ability to master core developmental tasks including how a child may regulate emotions, how they form relationships, or if they develop the ability to learn and explore their environment. A lack of screening consistency among providers may cause problems with coordination and continuity of treatment for a child. The goal of the state's EPSDT, also referred to as Health Tracks, is early detection, prevention, and treatment of problems for all children and youth enrolled in Medicaid. Components of Health Tracks screening include health history, physical examination, identification of all medical conditions and needs, immunizations, age-appropriate laboratory tests, development assessment, nutritional assessment, mental health screening, vision screening, hearing screening, oral inspection, and treatment and referrals for any necessary services.

The committee received information regarding behavioral health issues involving students in schools. Identifying behavioral health issues in children is more common once a child begins school. The goal of addressing student behavioral health issues is to promote wellness among students in schools. A comprehensive plan should include public schools, community health services, mental health services, juvenile services, and criminal justice systems to interact as a solution to address mental health issues for students. Children who experience trauma are more likely to have lower grade point averages, a higher rate of school absences, a higher probability of dropping out of school, more suspensions and expulsions, a decreased IQ score and lower reading ability, deficits in attention, deficits in abstract reasoning, deficits in long-term memory for verbal information, and more special education services. Risk factors among students in middle and high school include depression, family structures, first interaction with law enforcement, addiction, and physical and sexual abuse. Behavioral health services are needed for students from various demographics, not only for "at-risk" students.

The committee reviewed behavioral health challenges of adolescents. Child neglect is the primary cause of juvenile justice and criminal justice involvement. The committee learned that it is important to identify youth early, assess them accurately, and provide diversionary options when possible. Youth in the custody of DOCR are an increasingly challenging group to service. Complex and often interrelated issues require intensive and sometimes lengthy interventions to allow a youth to successfully return to their home, school, and community. Policies and strategies should keep at-risk youth connected to their homes, schools, and communities. In addition, policies should be developed to strengthen families, and strengthen intervention in families to support, encourage, and promote positive child development.

The committee learned 47 licensed private and public adolescent substance abuse treatment programs are operating in the state. In addition, the DHS Behavioral Health Division administers the voluntary treatment program that provides out-of-home treatment services for a Medicaid-eligible child with a serious disorder.

The committee learned youth services provided through regional human service centers include specialized rehabilitation services and specialized clinical services. Specialized rehabilitation services include the partnership program, the transition to independence program, and supported employment. Youth residential services include

psychiatric residential therapeutic services through the Ruth Meiers Adolescent Treatment Center in Grand Forks, residential child care services for females in foster care through Kay's Place in Minot, youth residential services through a residential treatment center in Bismarck, and treatment for youth with substance abuse disorder through PATH, Inc., in Fargo. The substance use disorder mothers and children program provide services for a child while the child's mother is receiving addiction treatment. In-home and community skills training are services for parent-child education, parenting skills, and daily living skills training. Court-ordered services include parental capacity evaluation, sex offender risk assessment, and adolescent drug court. The committee also reviewed other services for children including family focused services, inpatient treatment services, and residential treatment services. In the first quarter of fiscal year 2016, there were 557 youth in a partnership program, 595 youth receiving federal Title IV-E foster care services, 245 youth in substance abuse disorder services, 695 youth receiving individual psychotherapy, and 1,292 youth receiving case management services. The average age of a child receiving services was 12 years old.

Mental Health Training - School Districts

Section 5 of 2015 Senate Bill No. 2048 requires DPI to provide a report to the Legislative Management regarding mental health training provided by school districts. The department developed a *Youth Mental Health Training* fact sheet, which provides background of the state's mental health data and provides suggestions for ways to implement the youth mental health training. School districts are required to provide 8 hours of youth mental health training once every 2 years to all elementary, middle, and high school teachers and administrators. In addition, 2015 Senate Bill No. 2209 requires each school district to provide 2 hours of professional development each year relating to youth suicide risk indicators, appropriate responses, and referral sources to middle and high school instructional staff, teachers, and administrators. The committee learned 10 training sessions have been held in the state with 290 participants since July 2015.

The Department of Public Instruction received input from superintendents and educators throughout the state, and provided the following recommendations:

- Require each school district to provide a minimum of 8 hours of professional development on youth mental health each biennium to pre-kindergarten, elementary, middle, and high school teachers, paraprofessionals, administrators, and encourage ancillary and support staff to participate;
- Require at least 2 of the 8 hours to be used to address a school district's needs assessment results, which includes social and emotional learning, including resiliency, suicide prevention, bullying, and trauma; and
- Require each school district to report professional development hours to DPI.

Involuntary Treatment Laws

The committee reviewed information regarding involuntary treatment laws and issues. The information reviewed related to prior mental health and substance abuse legislation in the state, voluntary and involuntary treatment laws in other states, recent involuntary commitment case law, state holding period for emergency involuntary commitments, and states comparison of quality and use of outpatient commitment laws. The committee also received information from organizations regarding commitment laws, issues, and options.

Future Role of Human Service Centers and the State Hospital

The committee received information from DHS regarding the future role of the regional human service centers and the State Hospital for meeting the state's behavioral health needs. The department anticipates regional human service centers will provide the following services:

- **Emergency services** - 24-hour services manage and resolve crises in the least restrictive setting necessary, with referral to community services, in lieu of the State Hospital, whenever appropriate. Services will include open access assessment, 24-hour crisis line, mobile crisis services, social detoxification services, crisis residential services, and emergency services to jail.
- **Regional intervention services** - Regional intervention services refer to appropriate community services in lieu of State Hospital admission. Services will include assessment and screening services, community hospital services, and resource management.
- **Chronic disease management** - An integrated, multidisciplinary continuum of services for chronically mentally ill individuals to be provided in the least restrictive setting. Human service centers have an addiction program that meets requirements of North Dakota Administrative Code Articles 75-05 and 70-9.1. Services will include self-management support, rehabilitation and recovery services, targeted case management, medication management services, and residential services.

The regional advisory councils will be expected to evaluate the availability and effectiveness of care for planning and enhancing services. The Department of Human Services anticipates making changes at the State Hospital in areas including clinical director assignment, quality management development, accreditation preparation, electronic health record development, professional training partnerships, and telehealth expansion.

Behavioral Health Needs Assessment

The committee received information from DHS regarding a report on the behavioral health needs assessment. The purpose of the assessment was to identify priority recommendations to enhance the foundation of the state's behavioral health system, with the goal of supporting children, adults, families, and communities in health and wellness, to reach their full potential. The assessment included a review of epidemiological data, a review of the full continuum of care, and a review of global systems and infrastructure. Epidemiological data includes a review of the youth risk behavior survey, the behavioral risk surveillance system, and the national survey on drug use and health. The goal of the continuum of care model is to ensure access is available to a full range of high-quality services to meet the various needs of an individual. Funding and reimbursements, infrastructure, and best practices were considered for each area of the continuum of care model. The continuum of care includes:

- **Promotion and prevention** - Prevention is a cost-effective way to avoid issues relating to behavioral health disorders. Identified service gaps include limited resources for mental health promotion and mental illness prevention efforts, workforce issues, lack of credentialing for prevention-related professionals, and a lack of understanding of the value of promotion and prevention efforts.
- **Intervention** - Research has identified that early intervention services may contribute to reduced health care costs and assist with improved health and well-being of individuals. In addition, early intervention strategies assist individuals to recognize if they are at-risk for behavioral health disorders and may need assistance to identify and change high-risk behaviors into healthy patterns. Identified service gaps include lack of integrated education systems, workforce limitations, inconsistent universal screenings, lack of funding for screenings, inefficient process for conducting assessments and referring for further assessment and treatment services.
- **Treatment** - Treatment is the use of any planned, intentional intervention in the health, behavioral, and personal life of an individual suffering from a behavioral health disorder designed to enable the affected individual to achieve and maintain physical and mental health, and maximum functional ability. Identified service gaps include criminalization of behavioral health disorders, limited community-based services available to allow individuals choice of services in the least restrictive environment, lack of integrated services and data exchange, limited communication of available services, workforce limitations, and the need for clarification of the role of public and private systems.
- **Recovery** - Recovery is the process of change for individuals to improve their health and wellness, live a self-directed life, and strive to reach their full potential. Identified service gaps include workforce limitations, limited evidence-based services, lack of infrastructure to support available services in the state, and limited payments to support evidence-based recovery services.

The committee reviewed the following suggested changes identified in the behavioral health needs assessment:

- Increase the use of data collection and analysis of behavioral health systems;
- Support substance abuse disorder early intervention services;
- Establish a children's behavioral health leadership group;
- Promote mental health and early identification of mental illness;
- Continue to support public service delivery system changes relating to core services and population; and
- Recognize behavioral health conditions as a chronic disease.

Other Committee Information and Reports

The committee conducted a tour of the State Hospital, the James River Correctional Center, the Northeast Human Service Center, and behavioral health-related provider facilities in Grand Forks. The committee received other information from providers, organizations, and individuals related to the study of behavioral health needs, including:

- Behavioral health definitions;
- Role and challenges of residential treatment services;
- Substance abuse treatment needs;

- A summary of information provided by the Council of State Governments relating to behavioral health and the criminal justice system;
- Federal Mental Health Parity and Addiction Equity Act, including the legal framework of the Act, the implications of the Act for the state, and requirements of the Act;
- Current behavioral health issues under consideration at the federal level;
- The need for more programs and services that address the unmet needs of consumers and families in the state, including consumer-centered support programs and a formal one-on-one peer support program;
- The need to address the addiction counselor workforce shortage, including supporting professional development for workers and assisting treatment providers with offering additional services;
- The definition of addiction counseling pursuant to NDCC Section 43-45-01;
- The need for a continuum of care model for mental health-related services that would be similar to those of the state's developmental disability system; and
- The need for additional behavioral health services.

Recommendations Received by the Committee

The committee received the following recommendations from agencies, organizations, and individuals categorized by major topic areas:

Alternatives to Incarceration

- Address structure for local and state alternatives to incarceration;
- Allow prosecution deferred upon condition of successful completion of treatment and a period of crime-free conduct for first-time drug offenders;
- Allow offenders with low-level drug crimes or nonviolent crimes due to substance abuse have their convictions reduced to a misdemeanor or removed from their record upon successful completion of treatment and a period of successful probation;
- Add more pretrial services that provide timely evaluations that consider criminogenic risk factors and behavioral health needs to assist the judicial system in determining alternatives to felony convictions and incarceration;
- Expand the use of Rule 32.2 of the North Dakota Rules of Criminal Procedures, relating to pretrial diversion, to help address mental health commitment issues; and provide additional awareness of the services;
- Add more juvenile and adult drug courts, and additional funding for existing drug courts to help address the needs of individuals with a dual diagnosis;
- Ensure individuals can maintain psychotropic medications while incarcerated;
- Expand the use of electronic monitoring for individuals to reduce overcrowding in prison facilities;
- Divert individuals that are incarcerated because of an addiction into a long-term treatment program; and
- Allow DOCR flexibility to release certain offenders convicted of drug crimes to probation upon successful completion of DOCR treatment, similar to the authority DOCR has with felony driving under the influence offenders.

Behavioral Health Services/Programs

- Collaborate with the Behavioral Health Planning Council for advocacy;
- Determine whether programs are effective in achieving desired outcomes and prioritize funding for the programs that are working;
- Create incentives and provide statewide efforts to educate physicians about medication-assisted treatment;
- Enhance reimbursements for certain services, including telemedicine and levels of care;
- Address significant gaps in detoxification and intoxication management to reduce placements in jail for detoxification, including funding to ensure social detoxification services are sufficient and available in all regions of the state, and funding to major cities for operating their own detoxification centers;
- Address the limited funding and resources available for chemical dependency patients, including additional services similar to the Robinson Recovery Center program in Fargo;

- Require a standard minor in possession education course similar to the Prime for Life Driving Under the Influence program;
- Provide funding to establish and maintain adolescent treatment programs in local facilities or the State Hospital;
- Provide more partial outpatient treatment services, provide financial assistance for individuals participating in long-term aftercare at existing facilities, and include more aftercare programs for outpatients as part of the comprehensive treatment plan;
- Add funding to address recovery supports including housing, social, and peer support; increase use of peer support specialists; and provide reimbursements for recovery coaching;
- Provide additional services and options for long-term placement of individuals with severe mental illness;
- Increase use of vouchers to cover gaps in recovery supports; ensure ease of access, and allow more consumer choices for services through a voucher system;
- Review use of home- and community-based services waivers; and
- Create a zero-reject model.

Case Management

- Consider use of private case management options;
- Address the lack of available case management services at human service centers; and
- Address comprehensive case management services for individuals, including persons with serious emotional disability, homelessness, or incarcerated.

Children's Behavioral Health

- Provide a full continuum of care that is well-defined and integrated and support a continuum that would be similar to those of the state's developmental disability system;
- Provide additional community-based supports for mental health needs;
- Address public health approach to management;
- Develop a person-centered care model similar to the model developed at Washington State University;
- Provide funding to implement evidence-based practices to reduce risks;
- Provide an adequate grievance and appeals process;
- Improve collaboration among other special education professionals, social service offices, and local agencies;
- Provide oversight by DPI, the State Department of Health, and DHS;
- Develop and refine a shared services model that can be replicated and scaled up in both rural and urban school districts throughout the state;
- Support a school-based mental health system with funding and policy;
- Address the lack of collaboration among supports and providers, including preschool special education and child care;
- Adjust child care assistance rates for providers that care for a child with special needs;
- Support efforts to reduce toxic stress, build executive function and self-regulation, create active skill building including coaching and training, and develop human capital to improve outcomes;
- Improve access to mental health experts in schools for both the students and staff;
- Provide more programs for students with behavioral health issues including appropriate staffing levels for the programs;
- Address the need in schools for mental health assistance that includes a long-term teaching approach for students and families;
- Provide teachers with more professional resources to work with behaviorally challenging students in their classroom;
- Improve behavioral health-related discussions in schools;

- Create pilot project grants to create partnerships between school districts and state agencies to develop and coordinate resources in communities to allow students and families to receive needed support;
- Create a network that meets quarterly to discuss scope of project, share best practices, and review outcomes and program evaluation;
- Establish children's assessment networks to identify prevalence and service needs;
- Provide incentives for providers to add services where gaps exist;
- Review children's waiver options;
- Increase funding for child care inclusion services;
- Increase peer support services;
- Provide funding for a permanent supportive housing program for youth at risk of homelessness, human trafficking, suicide, or incarceration;
- Implement an evidence-based model that provides educational programming to students;
- Provide professional development and capacity-building to staff;
- Establish protocols and relationships with community care providers to facilitate acquisition of time sensitive and appropriate interventions and treatment;
- Provide early intervention, assessment, and referrals to support students before crisis occurs, including referrals and persistent facilitation with mental health care providers;
- Provide intervention, support, and follow through for students and families;
- Increase the number of inpatient psychiatric beds at community hospitals or the State Hospital;
- Address concerns regarding lack of community psychiatric facilities and inefficient use of medical transportation;
- Develop short-term community-based crisis beds that specialize in providing behavioral and psychiatric services;
- Increase use of critical access hospitals; and
- Establish a training center to assist individuals with finding a job and recovery skills training.

Database

- Develop and maintain a statewide behavioral health database, including a directory of behavioral health providers and specialties; one that will measure effectiveness, cost savings, and review data over a period of time; and determine if successful programs can be replicated;
- Expand the use of 2-1-1 services or develop a central call center for data collection and research for substance abuse, add funding and assist with a marketing campaign to provide awareness, and require organizations to provide updated information;
- Provide state funding to assist FirstLink with the National Suicide Prevention Lifeline service;
- Develop an online treatment locator that will include availability, waiting time, and service type; and
- Develop a bed management system.

Definition

- Develop a definition regarding who is served under behavioral health services;
- Define core services;
- Define emergency care;
- Review defining partial hospitalization as outpatient; and
- Add tobacco and nicotine to the addiction counseling services definition in NDCC Section 43-45-01.

Emergency Services

- Develop community-based crisis teams that are available to respond immediately to a behavioral or psychiatric crisis including mobile crisis teams;

- Ensure universal access across the system for all levels of crisis services, including assessment, inpatient, short-term housing, and in-home crisis response; and
- Provide additional financial and nonfinancial support for behavioral-related care, including training, equipment, and legal services for emergency medical services providers, including local emergency medical responders, volunteer and professional emergency medical technicians, paramedics, and community paramedics.

Evaluation

- Standardize screening and assessments, and provide a system of reimbursement;
- Require providers to use the same screening tools to ensure accuracy of results, increase ease of communication between provider agencies, and to promote the ability to measure change and a child's progress;
- Address underutilization of EPSDT services as an entry point for services and source of payments;
- Allow child care providers to be trained to provide early childhood screenings;
- Require child care providers to be included in the development of individualized education plans to help address challenging behaviors;
- Consider reviewing NDCC Section 25-03.1-04 to allow for individuals to be screened via interactive television; to establish a statewide screening system that would allow any regional human service provider to provide prescreening services, rather than limiting prescreening to only the local regional human service center; and to allow a qualified medical professional to conduct a screening for admission to the State Hospital;
- Maintain doctor-patient relationships by providing for an independent examiner to assess a patient, collect required data, and represent a county during hearings;
- Require human service centers to provide temporary onsite services to accommodate the needs of individuals in permanent supportive housing; and
- Support suicide prevention, including supporting mental health questions on health screenings.

Housing

- Continue the North Dakota housing incentive fund; and authorize a one-time contribution to a landlord risk mitigation fund to provide an incentive for landlords to rent to households struggling with challenges that include poor credit, criminal history, and eviction history;
- Continue the North Dakota Homeless Grant;
- Authorize one-time funding for development of a regional coalition relating to homelessness, hunger, and poverty;
- Authorize a homeless prevention program;
- Provide funding to implement a mental health group home model in the state;
- Add more transitional and residential facilities;
- Increase substance abuse services and services for individuals diverted from the prison or probation system, including halfway houses, transitional housing, and peer support advocates;
- Provide funding for establishing and maintaining halfway houses in each region of the state that can provide onsite support and structure for individuals, which includes additional funding for case managers and onsite house managers;
- Review residency laws relating to vulnerable adults;
- Expand funding to increase permanent supportive housing units and provide permanent housing services throughout the state similar to the services provided by the Cooper House in Fargo; and
- Increase access to mental health and other related services that improve educational outcomes for transitional youth, including implementation of services that identify and connect with transitional youth, increase awareness of local resources, and connect transitional youth to services and supports.

Involuntary Commitment

- Extend the state's holding period for emergency involuntary commitments from 24 hours to 72 hours;
- Allow the hospital conducting a mental health commitment evaluation to have jurisdiction;

- Impose financial penalties on noncriminal traffic offenses, including speeding offenses, to generate funds that would provide additional grants through DHS to provide more beds for involuntary commitments; and
- Allow an individual to be placed into a treatment center during the emergency review process.

Labor Shortage

- Support professional development of workers and provide incentives for training offered by agencies;
- Add incentives, including loan forgiveness loan repayments or stipends for counselors and students training to become addiction counselors, and nursing staff in the behavioral health field;
- Create efforts to recruit psychiatrists, psychiatric nurse practitioners, physician assistants, and behavioral health professionals throughout the state;
- Create a media campaign for recruiting addiction counselors as a career choice;
- Partner with colleges and universities to align curriculum with tribal and national efforts, which includes tribal addiction workers, peer support specialists, and behavioral health technicians;
- Provide incentives for clinical supervisors training new trainees and support treatment providers that are willing to train new addiction counselors through the consortium system;
- Create dual licensure with other professions with agreements from other behavioral health-related boards;
- Increase use of telemedicine by expanding types of professionals using telemedicine, including counselors;
- Address the shortage of workers at human service centers, including psychiatry, therapy, and case management services; and
- Establish a minimum wage for individuals answering suicide calls in the state.

Licensing

- Adopt the National Association for Alcoholism and Drug Abuse Counselors uniform licensing recommendations for all 50 states;
- Authorize the Board of Addiction Counseling Examiners, or a related board, to include assessments of persons for use or abuse of gambling as part of a licensee's scope of practice;
- Allow licensed associate professional counselors to be considered a licensed mental health professional;
- Improve the reciprocity process for licensed addiction counselors, add funding for internship hours, and engage other master's- and doctoral-level practitioners with specific experience in the diagnoses and treatment of substance abuse disorders;
- Review reciprocity requirements and create "portability" contracts with surrounding states; and
- Allow Minnesota social workers to practice in North Dakota without a license for the purpose of providing services to Minnesota clients.

Medicaid/Insurance Coverage

- Maximize the use of federal funds that are available for behavioral health services, including the federal Medicaid Emergency Psychiatric Demonstration program;
- Consider requesting waivers through CMS for permanent supportive housing services, including the 1915(c) Home and Community-Based Services Waiver, the 1915(i) state plan option, and the 1115 waiver through demonstration projects provided by Medicaid;
- Add reimbursement requirements by third-party payers for telehealth, which currently exists for physicians;
- Require insurance companies to offer coverage for treatment services that are covered in neighboring states and to cover codependency and family treatment services provided by licensed addiction counselors;
- Allow Medicaid to provide reimbursement for services including recovery coaching, music therapy, mental health crisis intervention and stabilization, and review Medicaid rehabilitation service options;
- Review the federal Mental Health Parity and Addiction Equity Act of 2008;
- Change policy that requires an individual to expend $15,000 before Medicaid coverage is provided for family focused services; and

- Encourage support for continuing Medicaid Expansion and of the federal Affordable Care Act.

Patient Transitions

- Continue addressing youth issues, including foster care transitional living situations and youth runaways;
- Support families with a child that has a challenging behavior to ensure the continuity of supports between the child's school and home;
- Add incentives for physicians to work with treatment providers to expand medication-assisted treatments;
- Add additional services for individuals transitioning from the sex offender treatment program to the community;
- Support individuals transitioning from treatment facilities back into the community;
- Provide for coordination and communication between behavioral health services and primary care;
- Address patient transitions from specialization, primary care, and peer support;
- Increase utilization of health information network and health information exchange; and
- Improve care through record sharing.

Prevention

- Develop public awareness and an education campaign for the general public regarding behavioral health needs;
- Add more resources for educating individuals on the importance of mental health-related issues; and
- Increase efforts for public awareness of crisis services.

State Hospital

- Address the delay of transferring patients to the State Hospital after they are approved for admission; and
- Provide for the State Hospital to designate more beds for involuntary commitment patients.

Training

- Allow acceptable mental health training to focus on specific areas, including behavioral disorders, social and emotional needs of students, suicide prevention, behavioral and mental health, bullying, depression, eating disorders, drug abuse, stress, and trauma;
- Allow proven evidence-based training strategies that reduce risk factors for students and address specific needs of a school or district;
- Deliver statewide professional development to school district staff regarding mental health issues, including mental health first aid;
- Require all teachers, law enforcement, social service providers, and foster parents to receive training, including trauma-informed care;
- Address the issue of a lack of providers in the state that receive specialized training or have knowledge with children from birth to age 5;
- Provide a total of $3 million, including $1 million to rural school districts, $1 million to urban school districts, and $1 million to regional education associations for school-based mental health programming;
- Support education and training programs that address trauma-focused care and treatment that includes all disciplines and placement settings;
- Expand training opportunities and internship slots for providers and prescribers;
- Address the lack of providers with specialized training in mental health issues for youth and in evidence-based models of therapy;
- Provide funding for specialized training of adolescent and young adult substance abuse and mental health professionals;
- Assure training for primary care providers in evidence-based models;
- Review the current level of training hour requirements prior to licensure and allow for training to occur while an individual is employed;
- Implement common curriculum for consistency of training; and

- Provide adequate staffing levels and quality training for employees of DHS.

Transportation

- Consider changes to reduce the need for transporting individuals to other communities for hospitalization and subsequently to the original community for a hearing;
- Provide funding for more access services to transportation;
- Reimburse counties for the costs of transporting an individual outside of a county; and
- Provide funding and assistance with transportation and other costs to allow family members to participate in programs not in their area.

Committee Recommendations

The committee recommends Senate Bill No. 2038 relating to policy changes that do not require additional funding to:

- Extend the holding period from 24 hours to 72 hours for emergency involuntary commitments for individuals with a serious physical condition or illness;
- Change youth mental health training requirements to require each school district to provide a minimum of 8 hours of professional development on youth mental health each biennium for teachers, paraprofessionals, administrators, and encourage ancillary and support staff to participate; to require at least 2 of the 8 hours to be used to address a school district's needs assessment results, which may include social and emotional learning; and to require each school district to report professional development hours to DPI;
- Require behavioral health training for early childhood service providers; and
- Create a children's behavioral health task force.

The committee recommends House Bill No. 1040 relating to program expansion with additional funding requirements to:

- Appropriate one-time funding of $10,000 from the general fund and require DHS to adopt rules for an evidence-based alcohol and drug education program for individuals under 21 years old in violation of NDCC Section 5-01-08;
- Appropriate $1,956,000 from the general fund to DHS for children's prevention and early intervention behavioral health services;
- Appropriate $70,000 from the general fund to DHS for a behavioral health database;
- Appropriate $1,920,000 from the general fund to DHS for peer-to-peer and family-to-family support services;
- Appropriate $24,393,668, of which $12,196,834 is from the general fund, and authorize 1 full-time equivalent position for DHS for targeted case management services for individuals with severe mental illness and severe emotional disturbance.

The committee recommends Senate Bill No. 2039 relating to the role and function of DHS to:

- Change behavioral health definitions;
- Change administration of behavioral health programs to define the roles for policy and service delivery divisions;
- Change the licensure process for regional human service centers to require accreditation from a national accrediting body and licensing by DHS;
- Add crisis services to the continuum of services for individuals with serious and persistent mental illness;
- Change membership and role of advisory groups for human services centers;
- Allow designated behavioral health providers to furnish preventive diagnostic, therapeutic, rehabilitative, or palliative services to individuals eligible for medical assistance; and
- Remove the designated location of a second state hospital for the mentally ill.

The committee recommends Senate Bill No. 2040 to change the definition of addiction counseling to include gambling, tobacco, nicotine, or other harmful substance or behavior, as defined in the *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association, 5th edition, text revision (2013), or a future edition adopted by the board.

The committee recommends Senate Concurrent Resolution No. 4002 to amend and reenact subsection 8 of Section 12 of Article IX of the Constitution of North Dakota to remove provisions requiring a state hospital to be located in Jamestown.

OTHER COMMITTEE RESPONSIBILITIES

In addition to the study of family caregiver supports and services and the study of behavioral health needs, the committee also received information relating to other committee responsibilities, including the Autism Spectrum Disorder Task Force, autism spectrum disorder voucher program pilot project, CHIP, Medicaid Expansion, brain injury life skill services, developmental disabilities, developmental disability waiver eligibility, family control parent-to-parent support, family-to-family health information and education, adult protective services, quarterly behavioral health services reports, addiction treatment services voucher, and statutory references to mental health professionals.

Autism Spectrum Disorder Task Force

North Dakota Century Code Section 50-06-32 establishes an Autism Spectrum Disorder Task Force. The task force examines early intervention services, family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder.

The task force includes 14 members appointed by the Governor. The task force recommended adding two additional members to the task force, including an adult with autism and a tribal representative. The task force meets four times per year. The task force developed a state plan in 2014, and within the next year, the task force anticipates merging the goals provided in the state plan by integrating a collective impact design. Collective impact is a collaborative effort model to share ideas, costs, and information to improve services and supports statewide, regionally, and nationally. The new approach will allow the state to maximize the efficiency and effectiveness of autism services.

Autism Spectrum Disorder Voucher Program Pilot Project

North Dakota Century Code Section 50-06-32.1 required DHS to establish a voucher program pilot project beginning July 1, 2014, to assist in funding equipment and general educational needs related to autism spectrum disorder for individuals below 200 percent of the federal poverty level from age 3 to under age 18 who have been diagnosed with autism spectrum disorder. In addition, DHS is required to adopt rules addressing management of the voucher program pilot project and to establish eligibility requirements and exclusions for the voucher program pilot project. Section 13 of 2015 Senate Bill No. 2012 provides for the continuation of the autism spectrum disorder voucher program pilot project and to report to the Legislative Management regarding the autism spectrum disorder voucher program pilot project.

The committee learned 55 voucher applications have been received since July 1, 2015, and of the 55 voucher applicants, 43 families have met the income criteria and 41 families are actively being served. Each qualifying child is eligible for up to $12,500 per year. Voucher funds may be used for a one-time item purchase, for ongoing services, or for both a single-item purchase and ongoing services. Funds are used for various purposes including autism-specific camps, tutoring, monitoring devices, sensory processing equipment, communication devices, and respite care. Any funds that are not utilized by a family will be released into a voucher pool for other families to access.

Children's Health Insurance Program

North Dakota Century Code Section 50-29-02 requires DHS to prepare, submit, and implement a CHIP state plan and report annually to the Legislative Management and describe enrollment statistics and costs associated with the plan. The Legislative Assembly appropriated $20.5 million, of which $2.8 million is from the general fund, for the 2015-17 biennium.

The state reached the federal medical assistance percentage (FMAP) minimum for CHIP of 65 percent on October 1, 2013. The 65 percent FMAP continued until September 30, 2015. Provisions in the federal Affordable Care Act allowed the state to be eligible for an additional 23 percent federal match increase; therefore, the FMAP for CHIP is now 88 percent through September 30, 2016. The committee learned, as of December 2015, there were 2,523 premiums paid for children enrolled in CHIP.

Medicaid Expansion

Section 1 of 2015 House Bill No. 1037 requires DHS to study options for implementing income-based cost-sharing provisions for the Medicaid and Medicaid Expansion programs and to provide a report to the Legislative Management regarding the outcome of the study and the associated legislative recommendations and related draft legislation. Medicaid cost-sharing provisions may include copayments and premiums; may be imposed on outpatient services, inpatient services, nonemergency use of emergency room services, and prescription drugs; may be imposed on

individuals in eligibility groups that include single adults, parents, aged, blind, and disabled. The department reduces the provider payment by the amount of the copayment obligation, regardless of whether the copayment is collected by the provider. Services that are exempt from cost-sharing include emergency services, family planning services, preventative services provided to children, pregnancy-related services, and services resulting from provider preventable services. Individuals that are exempt from cost-sharing include children under 18 years old, pregnant women, individuals living in an institution that are required to contribute most of their income to the cost of care, and individuals receiving hospice services. Medicaid premiums and copayments are limited to an aggregate of 5 percent of a household income, and DHS must monitor a beneficiary's premiums and copayments. Premiums under a state plan may not be imposed on individuals with incomes below 150 percent of the federal poverty level. The committee received additional information regarding various examples of premium waivers approved by CMS; the CMS training provided to state Medicaid agencies; reports and studies on Medicaid cost sharing; and Montana's efforts to include premiums for its Medicaid Expansion population.

The committee considered, but did not recommend a bill draft to eliminate Medicaid copayment requirements.

Brain Injury Life Skill Services

Section 1 of 2015 House Bill No. 1046 requires DHS to provide a report to the Legislative Management on the use funds appropriated to DHS for the purpose of providing life skill services for individuals with brain injury. The department contracted with Community Options, Inc., to provide a minimum of 6 hours of service to 50 individuals per month through June 30, 2017. The prevocational skills program is designed to improve "soft" skills through community integration and volunteer experience to prepare individuals for employment. "Soft" skills include memory training, navigating public transit, communicating with others, and time management. The committee learned 40 individuals were involved in the prevocational skills program during June 2016. The average length of time an individual is in the program before entering the return to work program is 85 days. The return to work program is based on an evidence-based return to work model that seeks to achieve competitive employment through placement and long-term followup services in the community. The committee learned 25 individuals were involved in the return to work program during June 2016. Hours of employment are based on an individual's ability, needs, and impact of the brain injury. The brain injury program targets individuals that have a brain injury, including traumatic brain injury, aneurism, stroke, and trauma during birth. The committee learned the program is contracted with the North Dakota Brain Injury Network.

Developmental Disabilities

House Bill No. 1556 (2009) provided for DHS to contract for a study of the methodology and calculation for a ratesetting structure used by DHS to reimburse all developmental disabilities service providers. The independent contractor recommended changing to a prospective reimbursement process using an independent ratesetting and resource allocation model for the entire developmental disabilities client base. The 2011 Legislative Assembly directed DHS to establish a steering committee and develop a developmental disability payment system with an independent rate model utilizing the support intensity scale. During the 2013-15 biennium, it was determined the steering committee should address selected items prior to implementation of a new system, including reviewing concerns with ratesetting; identifying audit requirements and cost-related reporting; finalizing North Dakota Administrative Code, service descriptions, and related policies and procedures; submitting waiver and Medicaid state plan changes to CMS; and implementing the billing module within the case management system to accommodate making payments under the new payment system. Section 14 of 2015 Senate Bill No. 2012 requires DHS to provide a report to the Legislative Management regarding the activities of the developmental disabilities system reimbursement project.

The committee learned the current retrospective system does not relate the needs of the consumers to funding. Under the current system, an audit is required to be completed which is time consuming. The audit and cost settlement process can take up to 2 years to complete, which causes financial issues for some providers. The current system is labor intensive for providers and the state, and the new prospective system will allow funding to follow the consumer. The new system will allow the level of staffing to be based on the needs of the consumer. The new system will not require a cost settlement and there will be a statewide standard rate. The committee learned other tasks that need to be finalized to implement the new system include finalizing North Dakota Administrative Code changes, service descriptions, and related policies and procedures; submitting waiver and Medicaid state plan changes to CMS; and implementing a billing module within the case management system.

Testimony from Interested Persons

The committee received information from interested persons, including providers, organizations, and individuals. Key items expressed relating to the developmental disabilities system reimbursement project include:

- Concerns regarding the proposed new system for the developmental disability reimbursement project not differentiating a payment rate for community- and facility-based vocational services.
- Concerns regarding issues relating to the developmental disability reimbursement project not being addressed, including property costs, night staff, transition period, rates, outliers, and statement of costs.

The Department of Human Services addressed the issues and concerns provided to the committee as summarized in the following schedule:

Provider Issues	Current Status of Provider Issues
Development of a multiplier method	The development of a multiplier methodology for adults and children has been completed. The steering committee and stakeholder group recently met and have agreed on the children multiplier methodology. The department is currently preparing the budget estimates for the 2017-19 biennium, for the new multiplier methodology.
Development of an outlier process for consumers with exceptional medical or behavioral needs	Specific diagnosis conditions have been identified for an outlier process that will allow a provider to request enhanced funding if the support intensity scale does not provide enough hours and it is determined the lack of additional hours will pose a health or safety risk for that consumer. The department is including 2.5 percent of the project's budget to address potential consumer needs that may be included in this category.
Inclusion of a transition period	Consultants for the project determined there was no need for a transition period. The department does not anticipate a transition period. Additional funding will not be included for a transition period.
Determination of audit requirements and cost reports for providers	Providers with an intermediate care facility will need to submit cost reports pursuant to a CMS requirement of paying the upper payment limit. Providers that do not have an intermediate care facility will not be required to submit cost reports.
Development of community- and facility-based rates for day services	A review of rates and services provided by facility- and non-facility-based providers identified that non-facility providers have more costs; therefore, only one rate will be allowed for day services.

In addition, the committee learned DHS resubmitted its waiver amendment to CMS due to 2015-17 biennium budget reductions. The committee learned resubmitting the waiver amendment to CMS will delay implementation of the new system until January 2017.

After the committee completed its work, DHS issued a public notice on September 22, 2016, stating that the new ratesetting system for providers of developmental disability services will not be implemented on January 1, 2017. The department stated a new rate system may provide a different reimbursement rate to providers, and more time is needed to evaluate the number of clients who may be impacted if a provider chooses to provide less support.

Developmental Disability Waivers Eligibility

In March 2014, a new CMS rule established requirements for the qualities of settings that are eligible for reimbursement for Medicaid home- and community-based services, which are provided by the federal 1915(c) Home and Community-Based Services Waivers. The Department of Human Services completed a review of current services, which included site visits and work with CMS, consumers, and providers to assure compliance with new rules. Section 1 of 2015 Senate Bill No. 2234 required DHS to study eligibility for developmental disability waivers and to provide a report to the Legislative Management regarding the eligibility for developmental disability waivers.

The committee learned DHS created an internal eligibility workgroup in October 2014 to review the new *Diagnostic and Statistical Manual of Mental Disorders,* American Psychiatric Association, 5th edition, text revision (2013), and its impact on developmental disability eligibility. Initial recommendations provided by the workgroup include:

- If cognitive testing has been completed and is still valid, it will be considered in eligibility determination, but will not hold as much weight in the eligibility formula as it currently does.
- If cognitive testing has not been completed or it is no longer valid, it will not be required, but cognitive screening will be required.
- Adaptive functioning testing will be required and will hold more weight in the eligibility formula than intellectual functioning.
- Individuals with related conditions must have an intellectual disability or adaptive functioning disability.

The Department of Human Services distributed a survey to a group of stakeholders and a meeting was held in September 2015 to discuss results of the survey. The stakeholder groups identified various eligibility criteria for waivers. Some stakeholders also identified concerns with current eligibility criteria, including a requirement relating to intellectual disability or related condition. The committee learned that any suggestions or changes relating to eligibility for developmental disabilities waivers will be considered when DHS prepares its budget request for the 2017-19 biennium.

The committee received information from interested persons, including providers, organizations, and individuals. Concern was expressed regarding how DHS defines the term "related conditions" when determining eligibility of developmental disabilities services, and a suggestion was made that individuals with a diagnosis of Down syndrome be automatically eligible for developmental disabilities services without additional cognitive and functional testing.

The committee learned DHS requested guidance from CMS regarding eligibility of developmental disabilities case management services. An individual must qualify as needing an institutional level of care to be eligible for the developmental disabilities waiver. Even though an individual may meet certain criteria to be eligible for services, that individual may not qualify for any services because the individual does not meet the institutional level of care requirement. A state may choose its own level of care for determining eligibility for developmental disabilities waivers, which includes hospitalization, intermediate care facility, or nursing facility. Various tools are available to help states make a determination and a state must receive approval from CMS for its level of care. North Dakota chose an institutional level of care.

Committee Recommendations

The committee recommends Senate Bill No. 2041 to add Down syndrome to the definition of developmental disability for determining eligibility assistance.

Family-Controlled Parent-to-Parent Support

Section 19 of 2015 Senate Bill No. 2012 requires grant recipients of a family-controlled parent-to-parent support grant to provide a report to the Legislative Management regarding the use of grant funds. The North Dakota Federation of Families for Children's Mental Health is a parent-run advocacy organization that focuses on the needs of children and youth with emotional, behavioral, and mental disorders and their families, from birth through transition to adulthood. The committee learned the organization received a grant of $75,000 for the 2015-17 biennium and for the quarter ending September 30, 2015, the North Dakota Federation of Families for Children's Mental Health has provided support and education for over 121 families. In addition, the staff has had 5,796 parent contacts and 43 new referrals during the quarter.

Family-to-Family Health Information and Education

Section 20 of 2015 Senate Bill No. 2012 requires grant recipients of a family-to-family health information and education grant to provide a report to the Legislative Management regarding the use of grant funds. Family Voices of North Dakota is a health information and education center for families and professionals, that provides information and resources relating to health care, disability, and chronic health illnesses and issues for affected children with special health care needs. The organization received a grant of $75,000 for the 2015-17 biennium. Use of the grant funds includes adding a part-time consultant in the Dickinson area, increasing and maintaining hours of existing staff, and increasing travel for outreach services and to meet with families in areas without staff including Minot and Devils Lake.

Adult Protective Services Program

Section 23 of 2015 Senate Bill No. 2012 requires DHS to provide a report to the Legislative Management regarding the adult protective services program, including the effectiveness of the program, information on services and outcomes, and funding by human service region and in total. The program addresses the safety of vulnerable adults at risk of harm because of the presence or threat of abuse, neglect, or exploitation. Adults are considered vulnerable, or "at-risk," if a mental or physical impairment affects the ability of taking care of themselves or making good decisions. The program is offered statewide through the regional human service centers or local partner agencies. The Aging Services Division administers a statewide toll-free number that includes accepting adult protective services program reports. Since July 2015, 1,041 reports have been received by telephone or other communications and an online web intake form called Harmony for Adult Protective Services has reduced the amount of time adult protective services program workers spend receiving reports. The committee learned DHS is also standardizing the screening process to develop appropriate screening questions that will ensure worker safety during home or in-person visits. Adult protective services program workers are responsible for providing community training and education. The department has received a federal grant to provide for statewide training and education to law enforcement and victim service workers that will focus on addressing issues of abuse in later life. The committee learned, after 2015-17 biennium budget reductions, funding provided for the 2015-17 biennium totals $2,271,920, which includes $178,350 for the Badlands Human Service Center, $324,899 for the West Central Human Service Center, $200,984 for the South Central Human Service Center, $425,550 for the Southeast Human Service Center, $324,936 for the Northeast Human Service Center, $190,282 for the Lake Region Human Service Center, $303,261 for the Northwest and North Central Human Service Centers, and $323,658 for other statewide services.

Quarterly Behavioral Health Services Reports

Section 24 of 2015 Senate Bill No. 2012 requires DHS to provide a report to the Legislative Management regarding its quarterly behavioral health services. The new report has been designed to be consistent with other reports provided in DHS's *Quarterly Budget Insight* report. The report includes information on behavioral health services funding and on the number of individuals served in each program for the quarter.

Addiction Treatment Services Voucher

Section 4 of 2015 Senate Bill No. 2048 requires DHS to provide a report to the Legislative Management regarding the rules adopted to establish and administer the voucher system to assist in the payment of addiction treatment services provided by private licensed substance abuse treatment programs. The substance abuse disorder voucher program was implemented and guidance provided to all treatment providers in July 2016. The voucher will cover screenings, assessments, individual therapy, group therapy, family therapy, room and board, recovery coaching, urine analysis, and transportation.

The committee learned the program has two active providers in the state--Heartview Foundation and ShareHouse, Inc. The Department of Human Services is encouraging rural providers to also participate in the program.

Statutory References to Mental Health Professionals

Section 1 of 2015 Senate Bill No. 2049 requires DHS to provide a report to the Legislative Management regarding the outcomes of the study of statutory references to mental health professionals to determine whether changes in the law may help to more fully utilize these professionals within their scope of practice, as it relates to the responsibilities of DHS to provide services or license facilities. Stakeholders that participated with the project included the State Department of Health, DHS, the Board of Counselor Examiners, the Board of Addiction Counseling Examiners, the Marriage and Family Therapy Licensure Board, the State Board of Medicine, the State Board of Nursing, the State Board of Psychologist Examiners, the North Dakota Hospital Association, the Long Term Care Association, the North Dakota Life and Health Insurance Guaranty Association, the North Dakota Protection and Advocacy Project, and the State Board of Higher Education. The stakeholder group developed the following tiered model identifying various roles of mental health professionals:

Tier	Description
1	Greatest degree of broad-based comprehensive training in multiple areas of psychiatric illness, including capacity to practice autonomously in those areas; manage the highest level of responsibility and risk; and professionals include psychiatrists, psychologists, and primary care providers: a. Specific area of expertise - Include medical doctors, osteopathic physicians, and doctoral-level licensed psychologists. b. Breadth of training allows for oversight of care delivery within those fields - Includes medical doctors, osteopathic physicians, advanced practice registered nurses, and physician assistants.
2	Ability to direct care independently or delineate between various broad-based comprehensive training in diagnosis and modalities of treatment for behavioral health conditions: a. Specific area of expertise - Include licensed independent clinical social workers and licensed professional clinical counselors. b. Breadth of training allows oversight of care delivery within those fields - Include licensed marriage and family counselors, licensed addiction counselors, and registered nurses.
3	Behavioral health therapy; clinical direction under supervision; or enacting a treatment plan with comprehensive training in specific dimensions of behavioral health; include licensed associate professional counselors, licensed certified social workers, licensed professional counselors, licensed associate marriage and family therapists, occupational therapists, vocational rehabilitation counselors, school psychologists, and human relation counselors.
4	Supporting clinical services; paraprofessional service workers with some level of behavioral health training, but without formal licensing; or carryout treatment under the guidance of a licensed professional; include direct care associates and technicians.

Committee Recommendation

The committee recommends Senate Bill No. 2042 to change statutory references for mental health professionals to a tiered system.

INCARCERATION ISSUES COMMITTEE AND COMMISSION ON ALTERNATIVES TO INCARCERATION

INCARCERATION ISSUES COMMITTEE

The Incarceration Issues Committee was created by Section 4 of 2015 House Bill No. 1015. That section required the Legislative Management to select the Chairman and Vice Chairman of the committee and provided for the membership of the committee as follows:

1. Two members of the House Appropriations Committee;
2. Two members of the Senate Appropriations Committee;
3. One member of the House Judiciary Committee;
4. One member of the Senate Judiciary Committee; and
5. Other members serving in a nonvoting capacity:
    a. Two district court judges appointed by the Chief Justice of the Supreme Court;
    b. The Chief Justice of the Supreme Court, or a designee of the Chief Justice;
    c. One local law enforcement official appointed by the Governor from a city with a population greater than 10,000 based on the most recent decennial census;
    d. One local law enforcement official appointed by the Governor from a city with a population less than 10,000 based on the most recent decennial census;
    e. One state's attorney appointed by the Attorney General from a county with a population of 10,000 or more based on the most recent decennial census;
    f. One state's attorney appointed by the Attorney General from a county with a population less than 10,000 based on the most recent decennial census;
    g. The Attorney General, or designee of the Attorney General;
    h. The Director of the Department of Corrections and Rehabilitation (DOCR); and
    i. One member appointed by the Director of DOCR.

The committee was directed to study pretrial services, sentencing alternatives, treatment options, and other related issues. Section 3 of House Bill No. 1015 appropriated $50,000 to the Legislative Council for consulting services to assist with the study of incarceration issues.

In addition to the study responsibilities provided in 2015 House Bill No. 1015, the Legislative Management directed the committee to undertake the study provided for under 2015 House Bill No. 1165. That bill provided for a study, in conjunction with representatives of the executive and judicial branches and other stakeholders, of justice reinvestment reforms to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. The bill required the committee to seek technical assistance as appropriate from the United States Bureau of Justice Assistance, The Pew Charitable Trusts, and the Council of State Governments (CSG) Justice Center to conduct the reform initiative.

Committee members were Senators Ron Carlisle (Chairman), John Grabinger, and Terry M. Wanzek; Representatives Ron Guggisberg, Kim Koppelman, and Jon O. Nelson; Citizen members were Director of the Department of Corrections and Rehabilitation Leann K. Bertsch and the Director's appointee Thomas Erhardt; Attorney General Wayne Stenehjem and the Attorney General's appointees Rozana Larson and Aaron Roseland; Chief Justice Gerald W. VandeWalle and the Chief Justice's appointees Judge Douglas Mattson and Presiding Judge Frank Racek; and the Governor's appointees Scott Steele and Randy Ziegler. James D. Gion served as a member of the committee and as an appointee of the Attorney General before his appointment as a district judge.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

BACKGROUND

According to a report by the United States Bureau of Justice Statistics, an estimated 6,899,000 people were under the supervision of adult corrections systems in the United States at the end of 2013. Inmate counts documented by

DOCR indicated that after an average inmate decline between 2011 and 2012, the state has experienced an increase in average prison population since 2013.

The 2015 Legislative Assembly appropriated $177,774,343 from the general fund and $37,612,899 from other funds to DOCR for the 2015-17 biennium. The appropriation for DOCR provided for an increase of 22 full-time equivalent (FTE) positions, which increased the total number of FTE positions within DOCR to 836.29.

Justice Reinvestment

In 2010 Congress appropriated funds to the Bureau of Justice Assistance to launch the Justice Reinvestment Initiative (JRI) in partnership with The Pew Charitable Trusts. The Justice Reinvestment Initiative convenes the stakeholders in a state's justice system along with local policy leaders to devise data-driven approaches to criminal justice reform designed to generate cost-savings that can be reinvested in high-performing public safety strategies. Since the JRI began, 17 states have participated in the program and with technical support from The Pew Charitable Trusts and the CSG Justice Center, the states have implemented JRI legislation and policy solutions in addition to developing systems for tracking the impact of the reinvestment strategies.

States participating in a JRI first establish bipartisan, interbranch teams of elected and appointed state and local officials to work with researchers and criminal justice policy experts. States also engage a wide variety of stakeholders, such as judges, prosecutors, defense attorneys, victims' advocates, corrections staff, law enforcement agencies, local officials, and service providers. Participating states then develop policy solutions that target corrections population and cost drivers identified through systemwide data analyses that determine the key causes of a state's correctional costs and populations and the main barriers to enhanced public safety. Through legislation and other policy modification, these solutions are incorporated into the state's criminal justice operations. Upon passage of JRI legislation, reforms are implemented and a portion of the resulting savings is reinvested in evidence-based efforts to support additional public safety improvements. Projected savings vary across states and time periods, ranging from $7.7 million over 5 years to $875 million over 10 years. Total project savings amount to $3.3 billion, and states are projected to reinvest a total of $374 million in public safety initiatives.

Reports

In conducting its study, the committee received reports from representatives of numerous state agencies, local government officials, and other entities including the CSG Justice Center. The representatives of CSG conducted meetings with stakeholders throughout the state and gathered data from the various entities throughout the criminal justice system. Representatives of CSG provided the committee regular updates regarding its justice reinvestment initiative as well as recommendations for proposed legislation.

Department of Corrections and Rehabilitation

A representative of DOCR indicated since 1992 the probation and parole caseload has increased 217 percent and the inmate population day count has increased 134 percent. According to the report, about 85 percent of inmates in jail are incarcerated because of an inability to make bond as a result of the state not having standard pretrial detention practices.

Department of Public Instruction

The committee received testimony from a representative of the Department of Public Instruction which indicated many schools have programs to target at-risk students. The graduation rate goal for the state is 90 percent, and the state is at 89 percent. Alternative education settings provide opportunities for students who may not thrive in a traditional school environment.

North Dakota Association of Counties

A representative from the North Dakota Association of Counties reported county jails house 56 percent of the state's inmates, whereas nationally 35 percent of inmates are housed in local facilities. Planned county jail expansions across the state will increase bed capacity by 840 beds.

Department of Human Services

A representative of the Department of Human Services (DHS) indicated the treatment system in the state is acute, meaning an individual is diagnosed, sent to treatment for a specified period of time, and considered fixed, which is no longer the best practice. Because addiction is chronic, chronic-based treatment must to be used to cover a continuum of care.

Indian Affairs Commission

A representative of the Indian Affairs Commission indicated that although Native Americans comprise about 5 percent of the population of the state, Native Americans represent 25 percent of inmates in the state. The rate of revocation of parole for the Native American population is 21 percent.

Dakota Women's Correctional and Rehabilitation Center

A representative of the Dakota Women's Correctional and Rehabilitation Center reported the majority of female inmates at the center have substance abuse issues. Although inmates may receive treatment at the Tompkins Rehabilitation and Corrections Center, inmates must have a minimum custody level to be eligible for treatment. Testimony further indicated women of Native American heritage make up 40 percent of the female inmate population.

Office of the Attorney General

The Attorney General reported the overall crime rate has continued to increase. Although the 2015 crime report indicated increases in most crime statistics, there has been a significant decrease in the number of arrests and convictions related to driving under the influence.

Minority Justice Implementation Committee

A representative of the Supreme Court's Minority Justice Implementation Committee provided information that indicated a disproportionate representation of minorities in the state's criminal justice system. Because data collection has proven to be difficult, it was argued establishing a retrieval mechanism for county data would allow for a more long-term detailed analysis of each aspect of the criminal justice system.

CSG Justice Center

A representative from the CSG Justice Center indicated although the overall prison population in the state is low, the state is experiencing some of the largest rates of prison population growth in the country. The impact on the criminal justice system of increased crime and the resulting significant increase in the prison population was partly due to the population growth in the state during the first half of the decade.

Because courts do not always use the same offense codes and some records are missing race and gender information, the data collection and analysis by CSG proved to be a challenge that affected the ability to develop recommendations to address specific issues. Data collected indicated felony sentence events doubled between 2011 and 2014, with drug offenses being the primary driver of those sentences. The felony sentence events for drug offenses increased two and one-half times between 2011 and 2014, with 40 percent related to drug offenses and 79 percent of those cases related to possession. Class C felonies, the lowest level felony, comprise 83 percent of felony sentence events in the state. Between 2010 and 2014, new prison admissions for property and drug offenses increased 42 percent. In 2014, 72 percent of individuals who were sentenced to the custody of DOCR, were sentenced for either a new property offense, a drug offense, or a revocation of probation.

A representative of CSG indicated a smaller proportion of felony offenses in this state result in probation than the national average and most other states involved in justice reinvestment. Furthermore, offenders in 41 percent of misdemeanor cases are sentenced to incarceration, with 83 percent of misdemeanor sentencing events involving a period of suspended sentence and supervised probation.

According to CSG, a common theme among stakeholders in the state was a concern regarding a lack of treatment options to address mental health and substance abuse needs. Testimony indicated the majority of judges have sentenced individuals to prison to connect the individuals with mental health or drug and alcohol programming.

Representatives of CSG reported that maintaining the current incarceration trend will result in 1,200 more prison beds being used at a cost of about $485 million, which does not include any building costs to accommodate the anticipated 3,000 incarcerated individuals over the next decade. The state spends about $25 million incarcerating low-level property and drug offenders and individuals whose probation or parole has been revoked. In addition, individuals at higher supervision levels are revoked at higher rates, which representatives of CSG contended suggests additional support and services are needed earlier in the supervision period. According to data analysis by CSG, probation revocations cost the state more than $9 million each year in state prison costs.

A representative of CSG contended supervision, programs, and treatment adhering to evidence-based practices are able to reduce recidivism at a lower cost than prison. To reduce recidivism, supervision and programs must be focused on offenders with higher risks and needs. Representatives of CSG indicated the state would need to ensure that risk levels are used to prioritize access to community programs and treatment while moving felony probationers from an active caseload to a diversion type caseload based on risk level and demonstrated compliance. In general, the only programming provided through probation is at transitional centers because access to treatment through regional human service centers or private providers is very limited. It was contended probation and parole officers lack sanction and treatment options to respond to violations in a swift and cost-effective manner. Although nearly 75 percent of offenders on supervision are in need of substance abuse treatment, there are long wait times to access services and most communities lack the trained workforce and services necessary.

The recommendations from CSG included an array of community interventions for higher-risk individuals. Representatives of CSG suggested the first step is to bring representatives of DHS and DOCR together to develop and adopt standards for the implementation of community behavioral health services tailored for moderate- and high-risk offenders with serious behavioral health disorders. In addition, it was contended the state may consider adopting approaches to services and supports across all the human service centers, streamline interstate transfers, expand existing rural health care workforce initiatives to include behavioral health workers, and encourage the utilization of behavioral health assessments across agencies. The proposed policy solutions are intended to further the justice reinvestment, decrease incarceration, and improve behavioral health outcomes for individuals by averting growth through diversion of offenders convicted of low-level drug and property offenses to probation rather than prison or jail; reducing recidivism in a cost-effective manner by holding supervision violators accountable with swift, certain, and proportional sanctions followed by supervision and treatment as needed; increasing public safety by focusing supervision and program resources on probationers and parolees at a high risk for reoffending; and reinvesting in the expansion of effective behavioral health treatment for probationers and parolees with substance use and mental health needs.

Committee Considerations

The committee considered a bill draft which would have implemented presumptive probation, created a pretrial services program, changed the conditions of parole, created a batterers intervention standards oversight board, developed a risk and needs assessment tool, and created a new class of felony offenses. Proponents of the bill draft contended the proposal would address the majority of the issues facing the criminal justice system. Opponents of the bill draft contended the concepts in the bill draft were attempting to address a problem that does not exist. There was concern with respect to creating an entire class of offenses and whether reducing penalties for certain offenses is an evidence-based practice.

Based on recommended amendments by representatives of CSG and DOCR, the committee considered a bill draft that would shift the authority to allow sentence reduction credit from the judiciary to the facility administrator of the correction facility in which an individual is held; authorize the use of sentence reduction credit for time spent in custody; allow the parole board to consider medical parole for offenders who are not otherwise eligible for parole; remove the court's authority to excuse an offender from completing a domestic violence offender treatment program; create a new Class AA misdemeanor offense; require the use of presumptive probation for first-time, low-level offenses; reclassify ingestion, possession, and paraphernalia offenses; reduce the proximity to a school before an increased penalty for a drug offense is warranted; authorize additional mental health professionals to provide addiction counseling services; remove the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and create a pilot project for pretrial services. The bill draft was discussed at a joint meeting of the committee and the Commission on Alternatives to Incarceration.

Proponents of the bill draft contended a legislative proposal is needed to provide the 2017 Legislative Assembly a starting point to begin consideration of criminal justice system reform. Members of both the committee and the Commission on Alternatives to Incarceration supported the portions of the bill draft which allow for medical paroles, create a pretrial pilot project, and increase access to nutrition assistance programs with the addition of access to all types of nutrition benefits. Members of both the committee and the commission supported amendments to the provisions in the bill draft relating to good-time reduction credits to remove sentence reduction credit for sentences shorter than 60 days in a local jail or up to 6 months in the custody of DOCR.

Some committee and commission members raised the question whether it is appropriate to develop a Class AA misdemeanor offense level in the Criminal Code. Proponents of the idea argued the concepts would receive further scrutiny during the 65th Legislative Assembly and eliminating too many proposed reforms would defeat the purpose of justice reinvestment. However, sections providing for a Class AA misdemeanor offense were removed from the bill draft to avoid conflict with the federal definition of a felony offense.

Proponents of removing a court's authority to excuse an offender from completing a domestic violence offender treatment program argued anger management programming does not address the issue of domestic violence. However, there were concerns with respect to the lack of domestic violence treatment options in the rural areas of the state. Committee and commission members generally agreed it would be appropriate to require a court to order an offender to receive a treatment evaluation.

Proponents of amending the theft offense statute argued the inclusion of an automobile, aircraft, or other motor-propelled vehicle is no longer necessary as the value of those types of vehicles generally exceed $2,500. Therefore, committee and commission members supported an amendment to remove the unnecessary language.

Opponents creating a presumptive probation sentencing requirement argued most of the inmates at the State Penitentiary are imprisoned as a result of a probation revocation. However, some committee and commission members questioned the data provided by CSG, which indicated the state underutilizes probation. Members of the Commission

on Alternatives to Incarceration agreed to remove the provisions relating to presumptive probation while members of the Incarceration Issues Committee agreed to create a concept of presumptive probation for individuals convicted for a Class A misdemeanor drug offense.

The bill draft proposed to reduce from 85 to 70 percent of a sentence certain dangerous offenders are required to serve before becoming eligible for release. Opponents of the proposal questioned the costs associated with recalculating each inmate's sentence and the potential litigation based on errors in those calculations. Although representatives of DOCR argued the requirement has done nothing to enhance public safety, members of both the committee and the commission generally agreed the proposal likely was not feasible.

Opponents of a section reclassifying ingestion of a controlled substance from a Class A misdemeanor to an infraction questioned the ability to correct behavior if the offense level for ingestion of a controlled substance is reduced to an infraction. Proponents of the proposal argued ingestion statutes have been repealed in many states and have proven to be counterproductive. Members of both the committee and the commission agreed to reduce the level of offense to a Class B misdemeanor for a first offense.

Committee and commission members agreed reducing offence classifications for possession of a controlled substance and possession of drug paraphernalia, reducing the enhanced penalties for aggravating factors in a drug offense, and reducing the distance from a school from 1,000 feet to 500 feet before a court can use the proximity to a school as an aggravating factor for a drug offense were areas worthy of further consideration by the Legislative Assembly.

Proponents of allowing additional health care professionals to provide addiction counseling services contended the lack of treatment professionals could be addressed by allowing licensed independent clinical social workers and professional clinical counselors to provide addiction counseling. Members of both the committee and the commission supported the concept of expanding the spectrum of professionals allowed to provide addiction counseling.

Recommendation

The committee recommends House Bill No. 1041 to shift the authority to allow sentence reduction credit from the judiciary to the facility administrator of the correction facility in which an individual is held; authorize the use of sentence reduction credit for time spent in custody; allow the parole board to consider medical parole for offenders who are not otherwise eligible for parole; to require the use of presumptive probation for individuals convicted of Class A misdemeanor drug offenses; reclassify ingestion, possession, and paraphernalia offenses to a lower-level criminal offense; reduce the proximity to a school before an increased penalty for a drug offense is warranted; authorize additional mental health professionals to provide addiction counseling services; remove the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and create a pilot project for pretrial services.

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Chairman of the Legislative Management to select the Chairman and Vice Chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The Director of DOCR;
5. The Director of DHS;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys' Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the association.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget.

In addition to its statutory directive, the Legislative Management directed the commission to receive a report and recommendations from the CSG Justice Center relating to justice reinvestment in the state. The commission met with the Incarceration Issues Committee to receive a report and participated in consideration of a bill draft.

Commission members were Senators Ron Carlisle (Chairman), John Grabinger, and Terry M. Wanzek; Representatives Ron Guggisberg, Kim Koppelman, and Jon O. Nelson; Citizen members were Governor's appointees Dan Donlin, Mark A. Friese, and Dr. Gary Rabe; Attorney General Wayne Stenehjem; Chief Justice Gerald W. VandeWalle and Chief Justice's appointee Justice Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Maggie D. Anderson; Attorney General's law enforcement officer appointees Paul D. Laney and Jason T. Olson; North Dakota State's Attorneys' Association's appointee Meredith Huseby Larson; and North Dakota Association of Counties' appointee Duane Johnston.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

Recommendation

The committee recommends House Bill No. 1042 to shift the authority to allow sentence reduction credit from the judiciary to the facility administrator of the correction facility in which an individual is held; authorize the use of sentence reduction credit for time spent in custody; allow the parole board to consider medical parole for offenders who are not otherwise eligible for parole; reclassify ingestion, possession, and paraphernalia offenses; reduce the proximity to a school before an increased penalty for a drug offense is warranted; authorize additional mental health professionals to provide addiction counseling services; remove the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and create a pilot project for pretrial services.

The recommended bill differs from the bill recommended by the Incarceration Issues Committee by removing provisions to require the use of presumptive probation for individuals convicted of Class A misdemeanor drug offenses.

INFORMATION TECHNOLOGY COMMITTEE

North Dakota Century Code Section 54-35-15.1 requires the Legislative Management during each biennium to appoint an Information Technology Committee in the same manner as the Legislative Management appoints other interim committees. The committee is to consist of six members of the House of Representatives and five members of the Senate. The Chief Information Officer of the state serves as an ex officio nonvoting member of the committee.

Pursuant to Section 54-35-15.2 the committee's responsibilities include:

1. Meet at least once each calendar quarter.
2. Receive reports from the Chief Information Officer.
3. Review the activities of the Information Technology Department (ITD).
4. Receive and review information related to information technology projects with a total cost of $500,000 or more, including startup and closeout reports.
5. Receive and review information regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $500,000 as determined necessary by ITD.
6. Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues.
7. Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects.

Section 54-35-15.3 authorizes the Information Technology Committee to review any information technology project or information technology plan. If the committee determines a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget (OMB) the suspension of the expenditure or funding appropriated for a project or plan.

Section 54-35-15.4 provides the Information Technology Committee may request the State Auditor to conduct an information technology compliance review, including an agency's information technology management and planning as well as compliance with information technology plans and standards.

The committee is responsible for receiving various reports, including:

- A report from the State Board of Higher Education regarding higher education information technology planning, services, and major projects (Sections 15-10-44 and 54-35-15.2).
- A report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues (Section 54-35-15.2).
- A report from the Chief Information Officer regarding the coordination of services with political subdivisions and a report from the Chief Information Officer and the Chief Information Officer of the North Dakota University System regarding coordination of information technology between ITD and higher education (Section 54-59-12).
- The annual report from ITD (Section 54-59-19).

In addition to its direct statutory responsibilities for the 2015-16 interim, the Legislative Management assigned the committee the following responsibilities:

- Receive a report from the Statewide Longitudinal Data System Committee on the status of the statewide longitudinal data system, including recommendations for further development, cost proposals, proposals for legislation, and data sharing governance (Section 54-59-36).
- Receive a report from the Information Technology Department before July 1, 2016, on the findings of the consultant hired by the Health Information Technology Office to provide for a health data study (2015 House Bill No. 1021).
- Receive a report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2016 (2015 House Bill No. 1330).

Committee members were Representatives Mark S. Owens (Chairman), Ben Koppelman, Christopher D. Olson, Blair Thoreson, Nathan Toman, and Robin Weisz; Senators Kyle R. Davison, Richard Marcellais, David S. Rust, Larry J. Robinson, and Donald Schaible; and Chief Information Officer Mike Ressler.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT STRATEGIC PLAN AND ANNUAL REPORT

Strategic Plan

Section 54-59-06 requires ITD to develop and maintain a business plan. Pursuant to that directive, the department prepared a strategic business plan for the 2015-17 biennium. The primary areas of focus for the 2015-17 biennium strategic plan include maintaining and enhancing information technology security as well as evaluating and integrating cloud computing services. The plan includes 22 objectives relating to the department's mission to provide leadership and knowledge to assist customers in achieving information technology goals. The objectives are grouped into categories related to the customer experience, finances, internal processes, and employee professional development.

Annual Report

Section 54-59-19 requires ITD to prepare an annual report on information technology projects, services, plans, and benefits. Pursuant to the directive, the department prepared and presented a report for fiscal year 2016 that includes an executive summary, rate comparisons, and information on the department's performance.

The committee learned the department monitors the cost and revenue for each service to ensure that one service is not subsidizing another service. The federal government does not allow the department to charge rates that generate revenues in excess of costs; therefore, the department monitors its cash balances and adjusts rates accordingly. The department also monitors other entities' rates for similar services in an effort to maintain quality services at a fair price. The following is a summary of rate comparisons for the services that generate a majority of the department's revenue:

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information and Telecommunications Rates	Montana Information Technology Services Division Rates	Minnesota Office of Enterprise Technology Rates
Central computer processing unit (CPU rates)	**Batch CPU** $.64 per second	**Batch CPU** $.50 per second	**Batch CPU** $2.71 per second	**Batch CPU** N/A
	Other CPU rates $.64 per second	**Other CPU rates** $.50 per second	**Other CPU rates** $1.20 - $1.90 per second	**Other CPU rates** N/A
Network fees	**Device fee** $59.00 per device per month	**Device fee** $73.00 per device per month	**Device fee** $71.41 per device per month	**Device fee** $66.95 per device per month
	Desktop support $100 per device per month	**Desktop support** Included	**Desktop support** $101.25 per hour	**Desktop support** $78.00 per hour
	Access, information, enterprise management fee Included	**Access, information, enterprise management fee** $53.25 per device per month	**Access, information, enterprise management fee** N/A	**Access, information, enterprise management fee** N/A
	DSL service Cost plus $175/5mb	**DSL service** Actual cost	**DSL service** $410.49/1.5mb	**DSL service** Cost plus 15 percent
	ETS-5 service $765 per month	**ETS-5 service** Actual cost	**ETS-5 service** Actual cost	**ETS-5 service** $220 plus circuit costs

Software Development		
	Location	**Billing Rate Per Hour of Service**
Information Technology Department	Bismarck, ND	$81 to $115
Applied Engineering, Inc.	Bismarck, ND	$88 to $102
Eide Bailly LLP	Bismarck, ND	$90 to $165
Enterprise Solutions, Inc.	Bismarck, ND	$90 to $140
Nexus Innovations	Bismarck, ND	$94 to $140
Agency MABU	Bismarck, ND	$75 to $80
Connvertex Technologies, Inc.	Sandy, UT	$100 to $130
BPro Inc.	Pierre, SD	$55 to $75
Integration Architects	Minneapolis, MN	$90 to $125
QAT Global	Omaha, NE	$88 to $95
Seven Seas Technologies, Inc.	Chesterfield, MO	$88 to $103
TEKsystems Inc.	Atlanta, GA	$88 to $103

The report included information on the department's performance measures. The following is an update on the department's performance measures:

Performance Measures	Baseline (Previous Years)	Current Status (June 2016)	Target
Acceptable level of total net assets (ratio of total net assets to average monthly expenditures)	2012 - 2.1 2013 - 2.1 2014 - 2.5	2.5 (June 2015)	< or = to 2.0
Total number of customer projects and service requests completed:	2014 - 2015		
• Service requests	45,948 - 46,875	45,943	Monitor
• Incidents	69,412 - 72,755	84,361	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) related to:	2014 - 2015		
• Value	87.3% - 93.0%	87.3%	> or = to 92%
• Timeliness	91.1% - 95.3%	94.6%	> or = to 97%
• Quality	92.4% - 95.3%	96.4%	> or = to 97%
• Knowledge	93.7% - 95.3%	98.2%	> or = to 98%
• Professionalism and courtesy	93.7% - 100.0%	96.4%	100%
Employee satisfaction index (scale is zero dissatisfied to three very satisfied)	2012-13 - 2.20	2014-15 - 2.17	> or = to 2.0
Controllable employee turnover	2013 - 6.06% 2014 - 6.27%	8.03%	Below 6%
Percentage of strategic business plan objectives completed or on schedule	2014 - 61% 2015 - 54%	85%	> or = to 75%

INFORMATION TECHNOLOGY STANDARDS AND STATEWIDE PLAN

Information Technology Policies, Standards, and Guidelines

Section 54-59-09 requires ITD to develop statewide information technology policies, standards, and guidelines based upon information received from state agencies and institutions. Except institutions under the control of the State Board of Higher Education, each executive branch agency and institution is required to comply with the policies and standards developed by the department. Information technology policies, standards, and guidelines must be reviewed by the State Information Technology Advisory Committee. The committee learned the department has adopted policies, standards, and guidelines in a number of areas and continues to update and adopt new policies, standards, and guidelines as necessary.

Statewide Information Technology Plan

Section 54-59-11 requires every executive branch agency, except institutions under the control of the State Board of Higher Education, to prepare an information technology plan unless the Chief Information Officer grants an exemption. The plan must be prepared based on guidelines developed by the department and must be submitted to the department by August 15 of each even-numbered year unless the Chief Information Officer grants an extension. The department granted an exemption to the State Fair Association because the existing plan remains applicable in the 2017-19 biennium. No agencies received an extension for their required submissions. The department is required to review each entity's plan for compliance with statewide information technology policies and standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches are required to file their information technology plans with the department by August 15 of each even-numbered year. Based on the information technology plans, the department must prepare a statewide information technology plan. The statewide information technology plan must be developed with emphasis on long-term strategic goals, objectives, and accomplishments.

The committee learned the department is in the process of developing the statewide information technology plan and will present the plan to the Legislative Assembly in 2017. The plan will communicate a shared vision between state government, higher education, and elementary and secondary education; outline strategic initiatives; and establish goals and strategies that will serve as a basis for more detailed planning efforts.

LARGE INFORMATION TECHNOLOGY PROJECTS

The committee is authorized to review any information technology project or information technology plan. If the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to OMB the suspension of the expenditure of money appropriated for the project or plan. In addition, the committee is directed to review a project startup and project closeout report for any large information technology project. A large information technology project is defined in Section 54-35-15.2 to be an executive, judicial, or legislative branch

project with a cost of $500,000 or more or a higher education project that impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.

Project Management Lifecycle Process

The committee received information regarding the project management life cycle process which includes:

- **Project origination** - Proposed projects are evaluated for the next planning cycle, and the selected projects are included in the biennial budgeting process.
- **Project initiation** - The overall parameters of a project are defined, and project management is established to monitor the project.
- **Project planning** - The exact parameters of a project are defined to ensure all the prerequisites for the project execution and control are in place.
- **Project execution and control** - The project developer produces deliverable results, and the project manager monitors the status of the project.
- **Project closeout** - The project is assessed to identify any lessons learned and best practices to be applied to future projects.

Review of Large Information Technology Projects

For major information technology projects in progress during the 2015-16 interim, the committee received and reviewed quarterly status reports compiled by ITD, project startup and project closeout reports, and other information regarding specific information technology projects. The following is a summary of the project startup and project closeout reports and the iterative project reports received by the committee:

Project Startup Reports				
			Estimated	
Agency	Project Name	Project Description	Cost	Completion Date
Department of Health	Dakota immunization information system	Database for vaccination data for North Dakota residents	$3,574,410	April 2018
Department of Health	Women, infants, and children management information system	System upgrade to improve functionality	$466,832	January 2016
Department of Human Services	Transformed Medicaid statistical information system	Improved data extraction system related to the Medicaid management information system	$967,216	June 2015
Department of Human Services	Eligibility system modernization	Replacement of current eligibility systems with a single system to comply with the federal Affordable Care Act	$45,436,315	October 2017 - March 2018
Department of Transportation	Motor vehicle system replacement	Database replacement for all owner and vehicle records	$8,514,160	June 2016
Bank of North Dakota	Managed file transfer project	Develop a system to securely transfer financial files between the Bank and its partners	$646,152	May 2016
Judicial branch	Disaster recovery system project	Establish a disaster recovery site in a remote location to minimize data loss	$2,000,000	December 2016

Project Closeout Reports				
			Actual	
Agency	Project Name	Project Description	Cost	Completion Date
Department of Public Instruction	Statewide Longitudinal Data System (SLDS) for K-12	Implementation of a prekindergarten through postsecondary education data system	$4,721,496 (Budget of $4,625,552)	43 months - 2 months ahead of schedule
Information Technology Department	K-12 identity management	Development of an active directory to manage users for state applications in K-12 education	$395,802 (Budget of $451,283)	6 months - The same number of months scheduled
Tax Department	Taxpayer Access Point (TAP) business registration	Upgrading the current system to provide additional electronic services	$966,689 (Budget of $1,000,000)	12 months - The same number of months scheduled
Job Service North Dakota	WyCAN project	Replacement system for existing mainframe application	$22,085,727 (Budget of $76,490,063)	**Project was terminated**

Project Closeout Reports				
			Actual	
Agency	Project Name	Project Description	Cost	Completion Date
Department of Emergency Services	Statewide records management system project	Replacement for an existing law enforcement records management system	$1,084,312 (Budget of $1,172,579)	12 months - 8 months behind schedule
Information Technology Department	Billing system rewrite	Rewrite of two billing systems	$933,931 (Budget of $1,007,853)	21 months - 2 months behind schedule
Veterans' Home	Electronic medical records project	Upgrade of the medical records program to a new electronic health records program	$330,295 (Budget of $427,101)	31 months - 23 months behind schedule
Department of Health	Women, infants, and children management information system	System upgrade to improve functionality	$424,070 (Budget of $450,675)	12 months - 1 month behind schedule
Department of Human Services	Medicaid management information system project	Replacement of current Medicaid management system to comply with the federal Affordable Care Act	$102,326,059 (Budget of $113,062,140)	112 months - The same number as the revised schedule
Department of Emergency Services	Statewide seamless base map project	Create a database with detailed, seamless maps of the entire state	$3,900,000 (Budget of $3,927,957)	59 months - 6 months behind schedule

Iterative Project Reports		
Workforce Safety and Insurance - Claims and policy system replacement project		
Replacement of core business applications related to claims and policies to improve customer service		
Phase	**Costs**	**Completion Dates**
• Phase 1 - Planning and analysis	N/A	June 2015 (Actual)
• Phase 2 - Database consolidation	$4,833,317 (Estimated)	April 2017 (Estimated)
• Phase 3 - Policy application redesign	$10,000,000 (Estimated)	October 2019 (Estimated)
• Phase 4 - Claims application redesign	$15,000,000 (Estimated)	April 2023 (Estimated)
• Phase 5 - Transition, program, closeout	$45,000 (Estimated)	September 2023 (Estimated)
Department of Human Services - Eligibility system modernization project		
Replacement of current eligibility systems with a single system to comply with requirements of the Patient Protection and Affordable Care Act		
Phase	**Costs**	**Completion Dates**
• Phase 1 - Convert systems that determine eligibility under the federal Affordable Care Act	$45,436,315 (Actual)	February 2016 (Actual)
• Phase 2 - Planning for conversion of other system components	$25,000,000 (Estimated)	October 2016 (Estimated)
• Phases 3, 4, and 5 - To be determined after Phase 2	$40,000,000 (Estimated)	December 2018 (Estimated)

Department of Human Services - Medicaid Management Information System

The committee received information from the Department of Human Services (DHS) regarding the Medicaid management information system project. The primary function of the system is the payment of Medicaid claims from health care providers for individuals enrolled in the Medicaid program. The project was completed in October 2015 with a preliminary actual cost of $102,326,059. The department will remit five additional progress payments to the vendor, Xerox, during the 2-year certification process. The project started in June 2006 with an original budget of $60,202,453 and an estimated completion date of April 2008. At the time of this report, the department and Xerox were in the process of resolving system deficiencies. The known deficiencies relate to primary care provider referrals, recipient liability, member eligibility, and mass adjustments. The department is in the process of transferring call center services from Xerox to the department to more efficiently and effectively assist health care providers with questions about the system.

Department of Human Services - Eligibility Systems Modernization Project

The committee learned the eligibility systems modernization project replaces the current legacy eligibility determination systems with a fully integrated system that includes the federal Affordable Care Act requirements. The project includes five phases, each with separate budgets and timelines. The preliminary estimated cost for the total project is $110 million, including approximately $30 million of state funding. The first phase was implemented in February 2016; however, at the time of this report, DHS was in the process of working with the vendor, Deloitte, to resolve outstanding critical system defects. The first phase provides a self-service portal to assist individuals with determining their eligibility under the federal Affordable Care Act requirements. The department is in the process of planning the second phase of the project, which is anticipated to be complete in the fall of 2017. The second phase will determine

eligibility for various programs, including the supplemental nutrition assistance program, temporary assistance for needy families, and the child care assistance program.

Department of Human Services - Transformed Medicaid Statistical Information System

The committee learned the transformed Medicaid statistical information system project is a system designed to improve the process for extracting data from the Medicaid management information system for federal reporting requirements. The project fell behind schedule due to delays and defects in the Medicaid management information system project. The committee learned the revised estimated cost is $1.56 million, and the revised estimated completion date is September 2016.

Job Service North Dakota - WyCAN Project

The committee received information from representatives of Job Service North Dakota regarding the termination of the agency's WyCAN project. The project was being developed by a consortium of four states, including Wyoming, Colorado, Arizona, and North Dakota. North Dakota's participation in the project was terminated in April 2015 because the system being developed no longer aligned with the specific needs of the agency. No state funds were expended on the project; however, Job Service North Dakota did expend $22,085,727 of federal funds. Job Service North Dakota will continue to use the current system with minor modifications as an interim solution. Job Service North Dakota is in the process of identifying a long-term solution to replace the current system on the mainframe.

Workforce Safety and Insurance - Information Technology Transformation Program Project

The committee received information from representatives of Workforce Safety and Insurance (WSI) regarding the claims and policy system replacement project. During the 2013-15 biennium, WSI terminated an information technology transformation program project, because the vendor, Aon eSolutions, Inc., failed to provide adequate evidence that the project could be completed. Workforce Safety and Insurance filed suit against the vendor and received a settlement payment of $5 million. Workforce Safety and Insurance replanned the project and began development on the claims and policy system replacement project in July 2015. The project has four major phases, each with multiple smaller phases. The first phase includes business analysis and detailed planning, which was completed in June 2015. The first of three projects within the second phase was completed in April 2016 at a cost of $1.3 million, which was 6 weeks ahead of schedule and 21 percent under budget. At the time of this report, WSI was in the process of completing the second of three projects within the second phase with a budgeted cost of $1.65 million. The estimated cost of the entire claims and policy system replacement project is approximately $30 million.

Secretary of State - Data Processing System Project

In March 2016, the committee received a report from the Secretary of State certifying that the information technology components of the electronic filing system were ready for implementation pursuant to 2015 House Bill No. 1330. Approximately 325,000 files were successfully transferred from the mainframe system to the new system, and the data processing system project was activated for public use on March 1, 2016.

PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS

Section 54-59-02.1 requires the State Information Technology Advisory Committee to prioritize major computer software projects. The Chief Information Officer is to submit recommendations of the State Information Technology Advisory Committee regarding major computer software projects to the Information Technology Committee, OMB, and the Appropriations Committees of the Legislative Assembly.

The committee received information from ITD regarding the prioritization of proposed major computer software projects for the 2017-19 biennium. Executive branch agencies internally prioritized information technology projects and submitted their information technology plans to ITD. The Information Technology Department compiled the information technology projects over $500,000 by funding source. The State Information Technology Advisory Committee prioritized major executive branch computer software projects proposed for the 2017-19 biennium as follows:

Project	Preliminary Project Budget	
	General Fund	Total Funds
General fund projects		
1. Department of Corrections and Rehabilitation - Electronic health records system replacement	$935,907	$935,907
2. Information Technology Department - Statewide interoperable radio network	56,553,669	65,350,835
3. Secretary of State - E-voting equipment replacement	9,000,000	9,000,000
4. Department of Human Services - Child care licensing system	3,000,000	3,000,000
5. Secretary of State - Statewide electronic pollbooks	3,000,000	3,000,000
Total general fund projects	$72,489,576	$81,286,742

Project	Preliminary Project Budget	
	General Fund	Total Funds
Federal funds projects		
1. Department of Human Services and Information Technology Department - Health information technology network enhancement for care coordination services		$48,000,000
2. State Department of Health - Women, infants, and children electronic benefit transfer integration of contractor components		1,739,220
3. Department of Public Instruction - NDFoods system corrections and enhancements		2,267,371
Total federal funds projects		$52,006,591
Special funds projects		
1. Department of Transportation - Real ID implementation		$510,000
2. Workforce Safety and Insurance - Claims and policy system replacement project Phase 3		10,150,121
3. Job Service North Dakota - Unemployment processing system replacement (This is a federal funds project that was mistakenly submitted as a special funds project by Job Service North Dakota.)		11,000,000
4. Department of Transportation - Driver's license system rewrite		11,585,000
5. Department of Trust Lands - Accounting, asset management, and records system replacement		5,250,000
6. Workforce Safety and Insurance - Secure portal for injured workers, employers, and medical providers		1,050,660
7. Department of Transportation - Traffic data editing and analysis		1,074,000
8. Workforce Safety and Insurance - Reporting system replacement		535,000
Total special funds projects		$41,154,781
Total all projects	$72,489,576	$174,448,114

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

Section 54-59-12 provides for the review and coordination of information technology between ITD, higher education, and political subdivisions. In addition, Sections 15-10-44 and 54-35-15.2 provide that the Information Technology Committee receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects.

Higher Education

Planning, Services, and Major Projects

The committee received information from the State Board of Higher Education regarding higher education information technology activities pursuant to Section 15-10-44 and 54-35-15.2. The committee learned the North Dakota University System had the following major information technology initiatives for the 2015-17 biennium:

- The University System is in the process of completing a functional consolidation project related to Section 8 of 2015 House Bill No. 1003. The project includes consolidation of email systems, databases, and servers from the individual systems used by campuses to a delivery system established by the University System. The University System is in the process of documenting the components of the existing systems and developing policies and procedures for the new consolidated delivery system.
- The University System is in the process of completing an email consolidation and archiving project related to 2015 House Bill No. 1051. At the time of this report, the University System completed the email consolidation for all campuses except North Dakota State University and Valley City State University. In addition, some department level email servers need to be consolidated.
- The University System is planning for a learning management system consolidation project. The University System plans to renegotiate an existing contract with Blackboard Inc., to replace a variety of learning management systems with a single systemwide learning management system. The consolidation is anticipated to result in cost-savings and improved student and faculty user experiences.

Security Audit and Vulnerability Assessment

The committee received information regarding the results of an audit report for the University System's technology security audit and vulnerability assessment. The audit was conducted by Telecommunications Systems during the 2013-15 biennium. The audit identified 12 critical and high-risk vulnerabilities related primarily to missing software patches and upgrades and improper user credential management. The University System corrected many of the vulnerabilities during the audit process, and the University System continues to enhance security.

Elementary and Secondary Education

The committee received information from the Educational Technology Council, which is created by Section 54-59-17, regarding information technology initiatives for elementary and secondary education. The council provides governance for EduTech and the Center for Distance Education. The council's initiatives include classroom transformation and new technology grants and approving schools' technology plans.

The committee learned EduTech provides information technology services and professional development to North Dakota elementary and secondary schools. EduTech continues to manage PowerSchool application upgrades and to assist faculty and staff with the implementation of Microsoft Office 365 in schools.

The committee learned the Center for Distance Education continues to provide North Dakota's online distance education. The center is in the process of eliminating all printed course materials in a planned conversion to digital content. North Dakota enrollments in distance education increased from 511 in 2008 to 4,940 in 2016. The course completion rate in 2016 was 96.5 percent, compared to a national benchmark of 90 percent.

Political Subdivisions

The committee learned the coordination of information technology services between ITD and political subdivisions is essential to the efficient delivery of services. The Information Technology Department through the statewide information technology network provides the network connectivity, Internet access, firewall security, videoconferencing, and secure wireless access that supports the delivery of services. Information Technology Department personnel meet regularly with the technology resources group of the North Dakota Association of Counties to discuss issues and strategize about future improvements and enhancements. Information Technology Department personnel also have provided training to city representatives regarding the state's comprehensive records management program, which provides information on records retention and methods of records disposal for all city departments. During the 2015-16 interim, ITD coordinated with emergency services personnel and political subdivisions while studying the State Radio network and the feasibility and desirability of implementing a statewide radio interoperability network.

OTHER INFORMATION

State Radio Interoperability Network

The committee received information regarding the State Radio interoperability network initiative. The 2015 Legislative Assembly appropriated $1.5 million to ITD in Senate Bill No. 2016 to determine the feasibility and desirability of developing a statewide radio interoperability network. The Information Technology Department contracted with Televate LLC to conduct a study of a technical and feasible plan to deploy an integrated public safety network. Representatives of the Statewide Interoperability Executive Committee, selected state agencies, and public safety personnel provided comments to the committee regarding some concerns about the existing radio network and support for the study. In August 2016 the committee received the final report of the study conducted by Televate, LLC. The results of the study included an inventory of the current system along with a comparison of various options to implement a new interoperable network. The study identified a hybrid very high frequency (VHF) portable network as the most cost effective solution to meet the needs of public safety personnel. The estimated cost to implement the hybrid VHF portable network is $172.2 million with ongoing annual operating costs of approximately $12.9 million. The study recommended implementing the interoperable network in phases over a 5-year period with approximately $65 million of the $172.2 million project costs anticipated in the 2017-19 biennium.

In addition, ITD used $1.1 million from a federal grant to map critical service areas related to the FirstNet initiative. The FirstNet initiative will provide a dedicated wireless network for public safety data communication, but will not replace radio communication systems.

Desktop Support Services

The committee received information from ITD regarding the implementation of required desktop support services pursuant to Section 7 of 2015 House Bill No. 1021. Based on the provisions of the bill, 19 state agencies were required to receive desktop support services from ITD. The Information Technology Department deployed desktop support services for 18 of the 19 state agencies over the course of the first fiscal year of the 2015-17 biennium. Although required to receive desktop support services, the Department of Career and Technical Education anticipates delaying the implementation of desktop support services until the 2017-19 biennium due to budget reductions in the 2015-17 biennium. The results of a customer satisfaction survey conducted by ITD in June 2016 indicated that the users were very satisfied with the quality of service provided by ITD.

2015-17 Biennium Budget Changes

The committee learned the budget for the criminal justice information sharing system was transferred by the 2015 Legislative Assembly from ITD to the Attorney General's office, including 3 FTE positions and $3.1 million of funding. The committee learned the original general fund appropriation for ITD was $27,905,987 for the 2015-17 biennium. The

appropriation was reduced by $1,130,192, or 4.05 percent, due to budget allotments ordered by the Governor in February 2016. The appropriation was reduced by an additional $697,650, or 2.5 percent, due to budget allotments ordered by the Governor in August 2016. These reductions to the general fund appropriation for ITD were reflected in Senate Bill No. 2379 as approved by the Legislative Assembly during the August 2016 special legislative session. The reductions were primarily related to the statewide longitudinal data system (SLDS), EduTech, the Center for Distance Education, the K-12 network, the Educational Technology Council, and operating expenses.

2017-19 Biennium Rates and Budget Request

The committee received information from representatives of ITD regarding technology rates for the 2017-19 biennium. Assuming state agencies purchase the same level of services in the 2017-19 biennium as the most recent 12-month period, the department estimates fee changes for the 2017-19 biennium will generate approximately $900,000 of additional revenue to the department. The following is a summary of selected data processing rates for the 2017-19 biennium compared to the 2015-17 biennium:

Description of Service	2015-17 Budget Rate	2017-19 Budget Rate
Analyst	$73/hour	$76/hour
Analyst II	$81/hour	$85/hour
Analyst III or Project Manager	$95/hour	$99/hour
Senior Analyst or Senior Project Manager	$105/hour	$114/hour
Architect/Consultant	$122/hour	$132/hour

The committee requested information regarding the ITD budget request for the 2017-19 biennium, including information on total funding being requested compared to the 2015-17 legislative appropriation and information on major increases and decreases. The committee learned the department had not yet submitted its 2017-19 budget request because the department has been granted an extension until September 30, 2016, and therefore, information was not available.

Information Technology Department Vulnerability Assessment and Penetration Testing

The committee learned the State Auditor's office contracts for a vulnerability assessment and penetration test of the state's information technology network. For the 2015-17 biennium, ManTech International Corporation performed the testing. The testing included external and internal vulnerability assessments, security infrastructure review, incident response review, application vulnerability assessments, and penetration testing. The following is a summary of the findings:

Test	Findings
External and internal vulnerability assessments	The assessment tested 57 publicly accessible network segments and 127 internal network segments. Vulnerability findings were present for all risk levels (critical, high, medium, low). The findings were classified into two categories--patch management and configuration management.
Security infrastructure review	The test team evaluated ITD's policies and procedures. The review identified no critical risk vulnerability findings, but did include high-, medium-, and low-risk vulnerability findings.
Incident response review	The test team evaluated an incident response exercise performed by ITD staff. The review identified no critical or low-risk vulnerability findings, but did include high- and medium-risk vulnerability findings.
Application vulnerability assessments	The Workforce Safety and Insurance web application was tested. There were no critical or high-risk vulnerability findings, but medium- and low-risk vulnerability findings were present.
Penetration testing	The test team executed multiple direct exploitation scenarios depicting an employee-based attack. The test team achieved direct system access under all scenarios.

The committee learned the findings are typical with an enterprise system that is similar in size to the state of North Dakota's system. The recommendations include enforcing a structured patch management program, providing additional staff training, updating and enforcing policies and procedures, reviewing and updating all encryption, and implementing and enforcing policies and procedures for effective continuous network monitoring.

Statewide Longitudinal Data System Initiative

The Legislative Management assigned the committee the responsibility to receive a report from the Statewide Longitudinal Data System Committee on the status of SLDS pursuant to Section 54-59-36. The committee received information from ITD regarding the department's continued support of SLDS both technically and professionally. During the 2015-16 interim, a scholarship eligibility software application was developed and integrated into SLDS. The Statewide Longitudinal Data System Committee submitted proposed legislation to the Higher Education Committee relating to the required use of standardized course codes and eTranscripts by school districts. The Higher Education Committee recommended a bill draft to the Legislative Management to implement the recommendations of the Statewide Longitudinal Data System Committee.

Health Information Technology

The committee learned ITD is continuing to develop a plan for a North Dakota Health Information Hub. The hub is a project to streamline the management of health information by integrating information from multiple sources into one consolidated hub. The committee received information from representatives of ITD regarding a health data study pursuant to Section 3 of 2015 House Bill No. 1021. The Information Technology Department was unable to obtain funding to complete the study as required by the provisions of the bill. However, the University of North Dakota conducted website scanning to identify existing state health data centers that could serve as models for North Dakota. The study identified the priorities of potential system users as well as the key features of data hubs in other states. Based on the results of the study, ITD believes a data hub developed for Rhode Island could serve as a model for the development of North Dakota's data hub.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies:

- House Concurrent Resolution No. 3012 (2015) directed a study of the registration requirements for offenders against children and sex offenders under North Dakota Century Code Section 12.1-32-15.
- Section 1 of 2015 House Bill No. 1302 directed a study of voter registration and policies to implement a system of voter registration, including provisions necessary to allow same-day voter registration.
- Section 1 of 2015 House Bill No. 1389 directed a study of issues relating to verification of citizenship status for the purpose of voting, including absentee and mail ballot voting. The section also directed a study of the process the Department of Transportation (DOT) uses to verify citizenship status in the issuance of driver's license and nondrivers identification cards and the feasibility and desirability of requiring the department to include on a driver's license or nondriver identification card of a noncitizen a notation indicating the individual is not a citizen of the United States.
- By Legislative Management Chairman directive, the committee was delegated the responsibility to review North Dakota statutes that may be in conflict with the definition of marriage ruling from the United States Supreme Court in *Obergefell v. Hodges*, *576 U.S.* ____ (2015).

The Legislative Management delegated to the committee the responsibility:

- To review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws under Section 54-35-02.
- For statutory and constitutional revision.
- To review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President (Section 54-03-32).

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state (Section 19-03.1-44).
- An annual report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices (Section 54-61-03).
- A biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering (Section 53-06.2-04).
- A report from the North Dakota Lottery regarding the operation of the lottery (Section 53-12.1-03).
- A report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the Executive Director of the Department of Human Services (Section 50-06-31).
- A report from the Task Force on Substance Exposed Newborns on findings and recommendations (2015 Senate Bill No. 2367 § 1).
- A report from the Department of Human Services regarding the number of revoked obligor driver's licenses, the duration and effectiveness of revocations, including a comparison of the state's driver's license revocation with other rural states, and a specific proposal that may limit the use of revocation of driver's licenses as a tool of enforcement (2015 House Bill No. 1111 § 15).

Committee members were Senators David Hogue (Chairman), Kelly M. Armstrong, John Grabinger, Carolyn C. Nelson, Erin Oban, Mac Schneider and Representatives Pamela Anderson, Roger Brabandt, Lois Delmore, Kathy Hawken, Richard G. Holman, Mary C. Johnson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Christopher D. Olson, Gary Paur, and Mary Schneider.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

OFFENDERS AGAINST CHILDREN AND SEX OFFENDER REGISTRATION

Background

Section 12.1-32-15 specifically addresses the registration requirements for offenders against children and sex offenders. This section, which became law in 1991, has been amended numerous times since being enacted. The section is the longest criminal statute in Century Code. Before the 2015 legislative session, representatives from the North Dakota State's Attorneys' Association recommended suggestions to amend the law to address inconsistencies such as the timeframe different offenders have to register as well as issues created by addressing both sex offenders and child offenders in the same statute. A representative from the North Dakota Association of Counties suggested an interim study would be the best method to approach the topic to allow adequate discussion between the interested parties.

Subsection 12.1-32-15(1) defines terms used in the section. A "sexual offender" is defined as a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, under at least one of the following:

- Section 12.1-20-03 - Gross sexual imposition.
- Section 12.1-20-03.1 - Continuous sexual abuse of a child.
- Section 12.1-20-04 - Sexual imposition.
- Section 12.1-20-05 - Corruption or solicitation of minor.
- Section 12.1-20-05.1 - Luring minors by computer or other electronic means.
- Section 12.1-20-06 - Sexual abuse of wards.
- Section 12.1-20-06.1 - Sexual exploitation by therapist.
- Section 12.1-20-07 - Sexual assault.
- Section 12.1-20-11 - Incest.
- Section 12.1-20-12.1 - Indecent exposure.
- Section 12.1-20-12.2 - Surreptitious intrusion.
- Chapter 12.1-27.2 - Sexual performances by children.
- Section 12.1-41-02(1)(b) - Trafficking an individual.
- Section 12.1-41-04 - Sexual servitude.
- Section 12.1-41-05 - Patronizing a victim of sexual servitude.
- Section 12.1-41-06 - Patronizing a minor for commercial sexual activity.
- An equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.

Under Section 12.1-32-15(2), an individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city after a court imposes a requirement that the individual register within 3 days of coming into a county or becoming temporarily domiciled if:

1. The individual has pled guilty or nolo contendere, or been found guilty as a felonious sex offender or an attempted felonious sex offender, a misdemeanor or attempted misdemeanor, is a juvenile found delinquent under Section 12.1-20-03(1)(d), Section 12.1-20-03(2)(a), or as a sex offender for a misdemeanor; or
2. The individual has pled guilty or nolo contendere, been found guilty of a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses, or has been adjudicated delinquent of any crime against another individual which is not otherwise specified in Section 12.1-32-15, if the court determines registration is warranted by the nature of the crime and therefore orders registration for the individual.

Under Section 12.1-32-15(3), an individual who has not been ordered to register by a court in this state but who resides, is homeless, or is temporarily domiciled in this state is required to register if the individual is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child, has pled guilty or nolo contendere, or been adjudicated for or found guilty of an offense which requires registration under North Dakota law, federal law, tribal law, or court of another country equivalent to the offenses in Section 12.1-32-15, or has pled guilty or nolo contendere, or has been found guilty of a crime against a child or as a sex offender requiring mandatory registration under this section if the conviction occurred after July 31, 1985.

Section 12.1-32-15(4) provides in determining whether an individual has a mental abnormality or has engaged in predatory conduct, a court is required to consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing.

Section 12.1-32-15(5) requires the official in charge of a facility or institution where an individual who is required to register under Section 12.1-32-15 is confined to inform the individual of the duty to register before the discharge, parole, or release of the individual. The official or department must require the individual to read and sign a form stating that the duty of the individual to register has been explained to that individual. The official or department in charge must provide three copies to the individual and three copies to the Attorney General 45 days before the scheduled release of that individual. The Attorney General must forward the copies to the local law enforcement agency having jurisdiction where the individual expects to reside, the prosecutor who prosecuted the individual, and the court in which the individual was prosecuted 30 days before the release of the individual.

Section 12.1-32-15(6) requires an individual who is released on parole or probation upon payment of a fine to be informed of the duty to register under Section 12.1-35-15 by the court in which that individual was convicted. The court must require the individual to read and sign a form stating that the duty of the individual to register has been explained to that individual. The court must obtain the address where the individual expects to reside, attend school, or work upon release and report the address to the Attorney General within 3 days. The Attorney General is required to forward one copy to the appropriate law enforcement agency.

Section 12.1-32-15(7) provides registration consists of a written statement signed by the individual, giving the information required by the Attorney General, and the biometric data and photograph of the individual. In addition, the individual is required to submit a sample of blood and other bodily fluids for inclusion in a centralized database of DNA identification records if the individual is not already required to do so under Section 31-13-03. Section 31-13-03 requires an individual 18 years of age or older who is arrested or summoned to appear for the commission of a felony to provide, at the time of arrest or appearance upon booking into a correctional facility, a sample of blood or other body fluids for DNA law enforcement identification purposes. Within 3 days of submission of a registration, the registering law enforcement agency must forward the statement, biometric data, and photograph to the Attorney General and submit the blood and fluid sample to the State Crime Laboratory. If an individual who is required to register has a change in vehicle or computer online identity, the individual must inform, in writing, the law enforcement agency that the individual is registered with, within 3 days after the change. If an individual who is required to register has a change in name, school, or residence or employment address, the individual must inform the law enforcement agency that the individual is registered with, in writing, at least 10 days before the change. Upon a change in address, the individual required to register also must register within 3 days of the change at the law enforcement agency with jurisdiction of the new place of residence, school, or employment.

Section 12.1-32-15(8) requires an individual who is required to register to comply with the registration requirements for the longer of the following periods:

- 15 years after the date of sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
- A period of 25 years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the Attorney General; or
- For the life of the individual if:

  On two or more occasions the individual has plead guilty or nolo contendere to, or been found guilty of a crime against a child or as a sex offender, unless a qualifying offense was committed after August 1, 1999;

  The individual is an adult and the victim is under age 12 and the individual pleads guilty or nolo contendere to an offense committed after August 1, 1999; or

  If the individual is assigned as high risk by the Attorney General.

Section 12.1-32-15(9) provides an individual required to register who violates the registration requirements is guilty of a Class C felony.

Section 12.1-32-15(10) provides when an individual is released on parole or probation and is required to register, but fails to do so within the time prescribed, the parole or probation must be revoked.

Section 12.1-32-15(11) requires the local law enforcement agency having jurisdiction over the place where an individual required to register is being temporarily sent outside the facility or institution where that individual is confined under conviction or sentence be notified within a reasonable time period before that individual is released from the facility or institution.

Section 12.1-32-15(12) requires the Attorney General, with the assistance of the Department of Corrections and Rehabilitation and the juvenile courts, to develop guidelines for the risk assessment of sex offenders who are required to register. The Department of Corrections and Rehabilitation is required to conduct a risk assessment of sex offenders who are incarcerated in institutions under the control of the department and sex offenders who are on supervised probation. The Attorney General is required to conduct risk assessments of sex offenders who are not under the custody or supervision of the Department of Corrections and Rehabilitation. The juvenile court or the agency having legal custody of a juvenile is required to conduct a risk assessment of juvenile sex offenders who are required to register. The Attorney General is required to notify the offender of the risk level assigned to that offender and the offender may request a review of that determination at which time the offender may present any information the offender believes may lower the assigned risk level.

Section 12.1-32-15(13) requires relevant information be disclosed to the public by a law enforcement agency if an individual is a moderate or high-risk offender and the agency determines disclosure of the conviction and registration information is necessary for public protection. If the offender has been determined to be a moderate risk, public disclosure must include notification of the offense to the victim registered under Chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender.

Section 12.1-32-15(14) releases a state officer, law enforcement agency, or public school district, or any appointee, employee, or officer of those entities from civil or criminal liability for making risk determinations or for disclosing or failing to disclose information as permitted under the section.

Section 12.1-32-15(15) requires a juvenile sex offender to comply with the registration requirements and local law enforcement agencies to register and release any information in the same manner as adult offenders.

Section 12.1-32-15(16) provides if an individual has been required to register as a sex offender or an offender against a child under that section or Section 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if the registration is no longer mandatory for that individual.

Section 12.1-32-15(17) prevents moderate or high-risk level offenders from using state parks as a residence or residential address to comply with the registration requirements.

Testimony and Committee Considerations

In its study of offenders against children and the registration of sex offenders, the committee received information and testimony from representatives of the Attorney General's office, a representative from the North Dakota Association of Counties, several state's attorneys, and a representative of the North Dakota Association of Criminal Defense Lawyers. The committee's deliberations focused on whether to amend Section 12.1-32-15 to address inconsistencies such as the timeframes during which different offenders are required to register, as well as addressing both sex offenders and offenders against children in the same statute.

The committee received considerable testimony supporting the statute as written. A representative from the Attorney General's office indicated the method of registration used in the state is more effective than the method required by the federal Adam Walsh Child Protection Safety Act. Although the state is not in compliance with the registration requirements of the Adam Walsh Child Protection Safety Act and therefore loses about 10 percent of federal Bureau of Justice Assistance Grants, federal funds are reallocated to North Dakota upon assurance to the federal government the state is continuing to develop and refine the sex offender and offender against children registration requirements. The committee received testimony from numerous sources indicating that although the registration requirements could be easier to read, the requirements are effective.

The committee received testimony regarding registration requirements as the requirements relate to timelines for a change in address or employment. The testimony generally indicated offenders have some difficulty in understanding the requirements, but law enforcement officials often exercise discretion depending upon an offender's history and the seriousness of the failure to report. The testimony also indicated concern over offenders working and living close to schools, particularly college campuses.

Conclusion

The committee makes no recommendation with respect to the registration requirements for offenders against children and sex offenders.

VOTER REGISTRATION AND VERIFICATION OF CITIZENSHIP

Voter Registration

Background

Although a number of states provide for same-day voter registration, North Dakota is the only state that does not require some form of voter registration. The Legislative Assembly enacted a bill requiring voter registration in 1895. The bill provided for voter registration 2 weeks before every general or municipal election in all cities and villages exceeding 1,000 in population. Voters who failed to have their names properly registered on the first day were permitted to have their names added by the local election board, which also served as the registration board, 1 week before the election. Even then, an unregistered voter could appear at the polls and vote by filing an affidavit supported by the oath of a householder or registered voter attesting that the prospective voter was a resident entitled to vote.

The Legislative Research Committee, predecessor of the Legislative Council and Legislative Management, studied the state's voter registration laws during the 1949-50 interim. As a result of the study, Senate Bill No. 61 was introduced during the 1951 legislative session. The bill repealed mandatory voter registration and left registration optional with the governing boards of the municipalities. The 1951 Legislative Research Committee report stated "[t]he present system is cumbersome and of limited effect since it does not apply to primary elections, usually the most important elections in the state." Senate Bill No. 61 passed unanimously in the Senate and passed in the House with a vote of 95 to 5.

In the majority of the legislative sessions between 1957 and 1975, unsuccessful attempts were made to pass legislation requiring statewide registration. In 1975 a bill requiring registration passed, but Governor Arthur Link vetoed the bill.

During the 1975-76 interim, the Legislative Council's Judiciary "A" Committee was directed to revise and modernize the state's election laws. The 1977 Legislative Council report indicated the subject of voter registration was thoroughly discussed; however, there was no general consensus on the need for a voter registration system. The committee heard proposals on voter registration ranging from a completely voter-initiated system to a completely government-initiated system. The government-initiated system involved door-to-door canvassing of every household in the state to determine qualified electors. The committee also considered proposals to provide branch offices for registration and to allow registration by mail. At the time, committee members were concerned voter registration might become a deterrent to voting, especially in rural areas where voter identification was a minor problem. Other members believed the existing affidavit system did not prove whether there was fraudulent voting in the state. As a compromise, the committee recommended a bill providing for statewide voter registration, which allowed any county containing no city with a population of 5,000 or more to be exempt from the system by resolution of the board of county commissioners. The bill, 1977 House Bill No. 1050, failed to pass the House.

The 1999-2000 interim Judiciary Committee was the most recent committee assigned to study voter registration and residency requirements. The committee focused on voter registration and the federal National Voter Registration Act of 1993, residency requirements, and challenged voters. The committee recommended 2001 House Bill No. 1047 to permit election board members and poll challengers to request identification from challenged voters to address voting eligibility concerns, which passed, and 2001 House Bill No. 1048 to provide a provisional ballot procedure for the ballots of challenged voters, which failed to pass the House.

North Dakota Voter Registration Laws and the Central Voter File

Section 40-21-10 allows the governing body of any city to require the registration of voters in any election held or conducted within the municipality. No city has instituted voter registration under that provision.

Under Chapter 16.1-02, the Secretary of State is responsible for the maintenance of a central voter file. Section 16.1-02-01 establishes a permanent, centralized electronic database of voters--the central voter file. Section 16.1-02-03 directs the Secretary of State to establish the central voter file from records maintained by DOT and each county auditor and to assign each voter a unique identifier. Section 16.1-02-04 requires the county auditor to immediately update the voter records maintained by DOT and the Secretary of State when the boundaries of a precinct are changed. Section 16.1-02-05 requires a county auditor to add any voter who is not already included in the central voter file within 45 days following an election and requires the Secretary of State to determine within 85 days of an election if any individual voted more than once. Section 16.1-02-06 requires the State Health Officer to report the name, address, date of birth, and county of residence of each individual 18 years of age or older who has died to the Secretary of State to assist the county auditor in updating the central voter file.

Section 16.1-02-07 requires the State Court Administrator to report the name, address, date of birth, and county of residence of each individual whose name was changed by divorce or any order or decree, to the Secretary of State to assist the county auditor in updating the central voter file. Section 16.1-02-08.1 requires the Director of the Department of Corrections and Rehabilitation to provide a report to the Secretary of State including the name, address, date of birth, date of sentence, effective date of sentence, and county in which a conviction occurred, of each individual who has been

convicted of a felony and incarcerated under the legal and physical custody of the Department of Corrections and Rehabilitation in the last year. The Secretary of State is required to designate those individuals as ineligible to vote within the central voter file. Section 16.1-02-09 requires DOT to report any relevant changes and updates that may require changes to the central voter file to be reported to the Secretary of State.

Section 16.1-02-10 requires each county auditor to post the voting history for each individual who voted in an election within 75 days of the election. At the end of each even-numbered calendar year, the Secretary of State is required to determine whether to change the status of each individual to "inactive" in the central voter file. Section 16.1-02-11 provides the Secretary of State the authority to adopt rules and procedures for the purpose of maintaining the central voter file. Section 16.1-02-12 provides the information required to be included for each individual in the central voter file, such as an individual's complete legal name, date of birth, residential address, mailing address, and the unique identifier assigned to the individual. Section 16.1-02-13 requires each county auditor to generate a pollbook for each precinct in the county from the central voter file by the day before an election. Section 16.1-02-15 provides a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes.

Section 16.1-05-07 addresses verification of the eligibility of an individual seeking to vote. Under that section, when verifying an individual's eligibility or when entering the name of an individual into the pollbook, the poll clerks at a precinct are required to request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook. If the individual's name is in the pollbook, the poll clerks are required to verify the individual's address. If the individual's name is not in the pollbook, but the individual is determined eligible to vote, the poll clerks are required to record the individual's name in the pollbook.

National Voter Registration Act of 1993

The federal National Voter Registration Act of 1993 [42 U.S.C. § 1973] requires individuals be given an opportunity to register to vote in elections for federal office when applying for or renewing a driver's license or other personal identification document issued by a state motor vehicle authority; when applying for or receiving certain types of public assistance and other services; by mail, using either an appropriate state form or a national form, and at a military recruiting office. The Act prohibits the purging of voters' names from voter registration lists solely for failure to vote and requires a program for positively confirming the accuracy and currency of the registration lists. The Act sets out specific and detailed requirements for the maintenance of voter lists that require multiple confirmation mailings in most cases. The Act provides for certain "fail-safe" voting mechanisms to ensure the right to vote prevails when a voter's name is eliminated or not included on a voter registration list.

North Dakota is the only state exempt from complying with the Act because North Dakota is the only state without voter registration. Only the states that had "same-day" registration in place at the time of the enactment of the Act were permitted to continue with that type of registration. If North Dakota implemented voter registration, it would immediately fall under the requirements of the Act.

Verification of Citizenship

Verification of United States citizenship is a responsibility of the United States Citizenship and Immigration Services of the United States Department of Homeland Security. During the 2015 legislative session, the House Judiciary Committee received testimony from representatives of DOT indicating that to verify citizenship for each applicant, DOT would be required to work with the Department of Homeland Security to establish processes deemed satisfactory by the Department of Homeland Security, and DOT would be required to prove an applicant's citizenship.

Testimony and Committee Considerations

A representative from the Secretary of State's office indicated a desire to explore the idea of requiring identification at the polls in conjunction with a method to demonstrate residency to determine whether such a requirement would be considered voter registration under the National Voter Registration Act. The fiscal impact of the state of implementing voter registration was estimated to be near $10 million.

The committee received testimony from a representative from DOT regarding the responsibilities of the department. Although the primary responsibilities of the department relate to motor vehicles, the department has taken on additional roles relating to the verification of residency and citizenship.

The committee received testimony from county auditors and representatives of the North Dakota Association of Counties indicating changes implemented since 2013, which relate to verification of eligibility of voters, have increased confusion among voters. However, it has yet to be determined whether the changes were necessary as voter fraud has generally not been an issue in the state.

A representative of the Colorado Election Division provided information relating to the mail ballot system used in Colorado. Colorado allows same-day registration, which permits an individual to register at the polling location if that individual can legally demonstrate the individual's right to do so.

A representative of the Minnesota Elections Division provided information related to the methods of voter verification used in Minnesota. That state uses postcard verification to confirm the residential address of registered voters while also providing an individual the opportunity to provide further documentation at a polling location.

A representative of the National Conference of State Legislatures provided information relating to the various types of voter registration in use throughout the country and the legal challenges some states have experienced through the implementation of voter verification of citizenship statutes. Because all the other states have voter registration requirements, most of the states address verification of citizenship through the registration process. According to the testimony, the most common method is attestation on the voter registration form.

The committee focused its deliberations on whether to implement voter registration or a method to verify citizenship and residency. The committee received extensive testimony regarding the ease of use of the state's central voter file compared to implementing voter registration. Testimony from election officials indicated pollworkers often have questions when determining residency for purposes of voting. The committee received overwhelming testimony against implementing voter registration or any type of verification of citizenship. Testimony indicated there are very few cases of voter fraud during each election, even fewer of which are prosecuted.

Testimony indicated the states that require verification of citizenship are facing legal challenges. In addition, the committee received testimony indicating there would be significant cost associated with implementing a voter verification system. To verify citizenship for each applicant, DOT would be required to work with the federal Department of Homeland Security to establish processes to enable DOT to provide verification. A verification process could include the scanning and verification of identification documents such as a birth certificate, passport, certificate of naturalization, or other form of identification. To prove residency, DOT would request and scan a document such as a utility bill or mortgage document to correlate an individual to a physical address. A full interview of the applicant would be necessary to complete the verification of each individual.

Conclusion

The committee makes no recommendation with respect to voter registration and verification of citizenship.

OBERGEFELL V. HODGES

Background

After the United States Supreme Court in *Obergefell v. Hodges, 576 U.S.* ____ (2015), determined the 14th Amendment of the United States Constitution provides the right for same-sex couples to marry, the committee was delegated the responsibility to review statutory provisions that may be in conflict with the ruling.

Testimony and Committee Considerations

In its study of the impact of the United States Supreme Court's decision in *Obergefell v. Hodges*, the committee received testimony from a representative of the North Dakota Association of Counties, which indicated the only change to state documentation relating to marriage licenses was a clerical change to the application form for a marriage license.

Testimony from a representative of the Attorney General's office indicated one of the lawsuits brought against the state before the Supreme Court decision in *Obergefell v. Hodges* involved seven same-sex couples, some of whom wanted to be married in the state and some of whom wanted their marriages to be recognized in the state. A second case was filed only on behalf of two women who had been married in Minnesota and were seeking to have their marriage recognized by the state. Although the state filed a motion to dismiss in each case, the cases were stayed pending the outcome of the *Obergefell v. Hodges* case. The federal judge issued orders finding Sections 14-03-01 and 14-03-08 unconstitutional after the *Obergefell v. Hodges* decision was released in June 2015. The federal court orders require the state to issue marriage licenses to a same-sex couple as it would to a heterosexual couple. Testimony indicated that although only two sections were specifically declared unconstitutional, many other statutory sections are likely unenforceable.

The committee received information from representatives from the Department of Human Services, North Dakota Public Employees Retirement System, and the North Dakota Association of Counties indicating *Obergefell v. Hodges* would not have a significant impact on the day-to-day operations of the state. According to information provided by the North Dakota Association of Counties, out of the 4,797 marriage licenses issued in 2015, 66 were issued to same-sex couples. Approximately 20 same-sex couples enrolled in group insurance plans under the Public Employees Retirement System.

The committee considered a bill draft to update the references to married couples in Century Code. The bill draft consists of 33 sections that amend language from either "husband or wife" to "two individuals married to each other" or "husband" or "wife" to "spouse." Although there was discussion regarding whether the statutory changes were necessary, the committee also was informed the changes would not be substantive in nature.

Recommendation

The committee recommends Senate Bill No. 2043 to address the inconsistent statutory references regarding married couples.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 12 members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The National Conference consists of representatives of all states, and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions. The commission presented these recommendations to the committee:

- **Revised Uniform Athlete Agents Act** (RUAAA), Revised 2015. North Dakota enacted the Uniform Athlete Agents Act in 2003. The purposes of RUAAA include providing enhanced protection for student athletes and educational institutions, creating a uniform body of agent registration information for use by state agencies, and simplifying the regulatory environment faced by legitimate athlete agents. The Act has been introduced in one state and enacted in three other states.
- **Uniform Disposition of Community Property Rights at Death Act**, which was completed by the Uniform Law Commission in 1971, for adoption by noncommunity property states such as North Dakota. This Act reserves the rights of each spouse in property that was community property before the spouses moved to the noncommunity property state, unless they have severed or altered their community property rights. This Act has been enacted in 16 states.
- **Revised Uniform Fiduciary Access to Digital Assets Act** (Revised UFADAA), which was completed by the Uniform Law Commission in 2014 and revised in 2015. The Uniform Fiduciary Access to Digital Assets Act was introduced in North Dakota in 2015 and failed to pass. In the modern world, documents are stored in electronic files rather than in file cabinets, e.g., photographs are uploaded to websites rather than printed on paper. The Revised UFADAA gives Internet users the power to plan for the management and disposition of their digital assets in a similar way as they can make plans for their tangible property. The Act has been introduced in 12 states and enacted in 19 other states.
- **Uniform Foreign-Country Money Judgments Recognition Act**, Revised 2005, which is a revision of the Uniform Foreign Money Judgments Recognition Act of 1962, which North Dakota enacted in 2003. Since its promulgation more than 40 years ago, the 1962 Act has been adopted in a majority of the states and has been in large part successful in carrying out its purpose of establishing clear and uniform standards under which state courts will enforce the foreign-country money judgments that come within its scope. Notwithstanding the success of the 1962 Act, a revision is necessary to update that Act. The revision is made timely by the continuing increase in international trade and the need for making each state a recognized forum for international business. The revised Act provides clear and certain rules for obtaining foreign-country money judgments, is a more comprehensive Act than its predecessor, and provides a better response to the current conditions of international trade. The Act has been introduced in two states and enacted in 22 other states.
- **Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act**. The Uniform Law Commission approved this Act in 2002 to provide for cross-border recognition and enforcement of Canadian domestic violence protection orders and a uniform system for the enforcement of domestic violence protection orders across state lines. In 2011 the Uniform Law Conference of Canada approved the Uniform Enforcement of Canadian Judgments and Decrees Act, providing for the recognition of foreign protection orders, including those of the United States. This Act has been introduced in Colorado and enacted in Delaware.
- **Uniform Power of Attorney Act**. The commission will consult with interested parties to determine whether to introduce this Act. This Act is designed to supersede the Uniform Durable Power of Attorney Act, which North Dakota enacted in 1985. The Uniform Power of Attorney Act seeks to preserve the durable power of attorney as a low-cost, flexible, and private form of surrogate decisionmaking while deterring use of the power of attorney as a tool for financial abuse of incapacitated individuals. The Act contains provisions that encourage acceptance of powers of attorney by third persons, safeguard incapacitated principals, and provide clearer guidelines for agents. This Act has been introduced in 2 states and enacted in 21 other states.

Conclusion

The committee makes no recommendation regarding these uniform Acts.

TECHNICAL CORRECTIONS

The committee continued the practice of reviewing Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language.

Recommendation

The committee recommends House Bill No. 1043 to make technical corrections throughout Century Code. The following sections are affected:

- Section 1-02-12. This section provides the headnote for a section of Century Code is not part of the law. In 2009 a change in publication style was made and effective date and expiration date notes were included immediately preceding the headnote. That publication style is undergoing another change in which the effective date and expiration date note will follow immediately after the headnote.
- Section 14-20-12. Section 14-20-18 was amended by 2013 Session Laws Chapter 124 to change the period to challenge a voluntary acknowledgment of paternity from 1 to 2 years. The corresponding change in Section 14-20-12 was inadvertently omitted.
- Section 25-02-01.1(1). In 2007 the Joint Commission on Accreditation of Healthcare Organizations simplified its name to The Joint Commission.
- Sections 52-10-04, 52-10-05(4), and 52-10-07. These provisions relate to the old-age survivors' fund. All members of the old-age survivors' fund are deceased and the fund has been closed.
- Section 54-52-01(17). The composition of the Public Employees Retirement Board in Section 54-52-03 was amended by 2015 Session Laws Chapter 56. Although the change to subsection 17, in effect through July 31, 2017, was made, the change to subsection 17, in effect after July 31, 2017, was inadvertently omitted.
- Sections 57-15-10.2, 57-38-01.29, and 57-38-01.30. Section 57-15-10.2, which addressed the tax levy for port purposes, is being repealed because Chapter 11-36, which dealt with port authorities, was repealed by 2015 Session Laws Chapter 439.
- Sections 57-38-01.20(7), 57-38-01.29, and 57-38-01.30. Sections 57-38-01.20(7)(l)(m), 57-38-01.29, and 57-38-01.30 were effective only for the 2007 and 2008 income tax years, with an extension for the 2009 income tax year for certain taxpayers inadvertently omitted under the 2007 legislation.
- Section 57-38-30.3(2). Paragraph i of subsection 2 is no longer necessary because Chapter 11-37, which dealt with commerce authorities, was repealed by 2015 Sessions Laws Chapter 439. Paragraphs l and m were effective only for the 2007 and 2008 income tax years, with an extension for the 2009 income tax year for certain taxpayers inadvertently omitted under the 2007 legislation.
- Section 57-51.1-03.1. House Bill No. 1476 (2015) eliminated various oil extraction tax exemptions and rate reductions. References to portions of Sections 57-51.1-02 and 57-51.1-03 eliminated in the bill were inadvertently left in Section 57-51.1-03.1.

REVIEW OF EXECUTIVE ORDERS

Pursuant to Section 54-03-32, the Legislative Management delegated to the committee the responsibility to review any executive order issued by the President of the United States which has not been affirmed by a vote of the Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The committee monitored and reviewed the executive orders issued between May 2015 and August 2016. The committee concluded there were not any executive orders issued during that period which rose to the level indicated in the directive.

Conclusion

The committee makes no recommendations for further review by the Attorney General and the Governor of any executive order issued between May 2015 and August 2016.

COMPREHENSIVE STATUS AND TRENDS REPORT

The committee received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in the state as required by Section 19-03.1-44. The report evaluated the following:

1. The youth risk behavior survey, which is conducted by the Department of Public Instruction every other year, examines the health risks taken by the state's children;
2. Data on the number and type of drug samples analyzed at the State Crime Laboratory;
3. Trends in substance abuse treatment as reported by the Department of Human Services;
4. Arrest statistics compiled by the Bureau of Criminal Investigation from reports submitted by local law enforcement agencies; and
5. Information from the Department of Corrections and Rehabilitation regarding the number of people incarcerated or on probation for drug-related crimes.

The report indicated alcohol continues to be the primary substance used in the state. The number of inmates with drug or alcohol offenses has more than doubled in the past 5 years, from 334 in 2011 to 779 in 2015. In the past 5 years, heroin- and methamphetamine-related drug violations have skyrocketed. Methamphetamine-related drug violations have quintupled, from 246 in 2010 to 1,633 in 2015, with heroin violations increasing from 4 to 177, a 4,300 percent increase.

While alcohol continues to be the number one substance reported by adults receiving treatment through the regional human service centers, methamphetamine use by adults has almost doubled in the last 3 years, from 21 percent in 2012 to 39 percent in 2015. The number of drug cases submitted to the State Crime Laboratory increased by 26 percent from 2013 to 2015, with drug cases involving heroin increasing by more than 400 percent during the same time period. The report noted the percentage of high school students who say they have taken a prescription drug without a prescription one or more times has decreased from 17.6 percent in 2013 to 14.5 percent in 2015, which is below the national average.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT

The committee received a report from the Director of the Commission on Legal Counsel for Indigents, as required by Section 54-61-03, regarding pertinent data on the operation, needs, and cost of the indigent defense contract system and any established public defender offices. The commission provides legal services to persons who are indigent and who are charged with misdemeanors and felonies in state district court. The commission also provides counsel to indigent persons who are parties in some juvenile cases and other miscellaneous matters.

In fiscal year 2015, the commission provided counsel in over 13,500 cases. The report indicated the caseloads in the northwest area of the state have been high; however, the commission works to ensure each attorney in the public defender office does not take more than 240 cases each year.

The commission's 2013-15 budget was insufficient to sustain the agency through June 30, 2015. The commission's budget for the 2015-17 biennium is $18,304,103 from the general fund and $2,106,914 from other funds. The other funds consist of $200,000 from the strategic investment and improvements fund as one-time funding for contract services fees for the 2015-17 biennium, and $1,906,914 from the commission's special fund. The special fund consists of statutory fees paid by defendants which include the court administration--indigent defense/facility improvement fee of $100 and the $35 indigent defense application fee from criminal cases. For the 2015-17 biennium, the agency was authorized 7 new full-time equivalent (FTE) positions. According to the report, the commission continues to encourage new attorneys to become public defenders while monitoring caseloads to avoid attorney burnout and reassess employee compensation as the agency loses employees to other agencies and the court system.

NORTH DAKOTA RACING COMMISSION REPORT

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The commission is responsible for regulating live and simulcast racing in the state. The commission's primary responsibilities are to regulate live and simulcast races as well as to license all of the participants, including simulcast service providers, tote operators, simulcast site operators, live track providers, simulcast employees, and live racing participants, including owners, trainers, and jockeys.

In the 2015 fiscal year, the account deposit wagering companies produced $405 million in handle and the handle is on track to reach a projected $600 million. The report indicated that as a result of the increased revenues, the commission is completely self-funded and returned $457,561 to the general fund in the 2013-15 biennium which was $68,317 over the general fund appropriation for the biennium. The commission is taking the following steps to ensure the account deposit wagering companies are held to a high standard of regulatory compliance and transparency in all aspects of operations:

- The commission entered a memorandum of agreement with the Thoroughbred Racing Protective Bureau under which that organization conducts a background check on each prospective account deposit wagering company and the principals of each company before taking any action on an application. No license is issued to an account deposit wagering company if the business practices of the company do not meet the highest industry standards.

- After receiving Racing Commission approval, the Attorney General reviews each account deposit wagering application to ensure full compliance with state and federal laws.
- The commission requires each account deposit wagering company employee to submit to a Federal Bureau of Investigation national background check through the state Bureau of Criminal Investigation before the employee may begin employment.
- The commission contracted with the pre-eminent pari-mutuel auditing company to provide independent monthly auditing of all account deposit wagering activity.
- The commission is working toward adopting the Racing Commissioners International Model Rules in an effort to ensure North Dakota follows current industry standards in all aspects of racing.

According to the report, the true purpose of the commission is not the proliferation of gambling, but rather the welfare of the North Dakota horsemen. The statutory tax structure of the commission requires all income resulting from account deposit wagering company operations directly or indirectly be returned to the horsemen. The .0025 percent tax of the total account deposit wagering handle is split equally into four funds--the general fund, which offsets the commission's funding for the subsequent years; the promotion fund, which is directed to supporting race meets in the state; the purse fund, which provides the vast majority of purse funding for the live races; and the breed fund, which promotes the breeding of horses in the state through performance awards. All breakage--the remaining pennies from pari-mutuel payoffs rounded up to a nickel or dime--from the account deposit wagering companies retained by the commission is deposited directly into the promotion fund. In addition to payments to the general fund, the commission contributed $1,150,500 during the 2011-13 biennium, and $1,540,500 during the 2013-15 biennium to the state's equine industry.

The report indicated Horse Race ND has formally entered a business plan with Lien Games Racing, LLC., to move forward with operating the North Dakota Horse Park in Fargo. According to the report, the partners have begun joint efforts to develop further revenue that will support the long-term payment of liabilities and growth of the North Dakota Horse Park.

LOTTERY REPORT

The committee received a report from the Director of the North Dakota Lottery regarding the operation of the lottery pursuant to Section 53-12.1-03. The lottery's goal is to provide a service to the citizens of North Dakota and, while considering the sensitive nature of the lottery, promote games and ensure the integrity, security, and fairness of its operation. To accomplish this, the lottery must offer attractive games that add value to its product mix, license retailers in convenient locations, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses.

For the 2015-17 biennium, the lottery had a fixed appropriation of $1,753,083 for salaries and fringe benefits for 9.5 FTE positions, and $3,529,695 for operating expenses, totaling $5,282,778. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds 8 FTE positions in the Lottery Division, 1 FTE position in the Information Technology Division of the Attorney General's office, and a .5 FTE position in the Finance and Administration Division. The appropriation also funds 3 part-time draw operators.

The lottery conducts five multi-state games: Powerball, Hot Lotto, 2by2, Mega Millions, and Lucky for Life. The Powerball game was launched on March 25, 2004; Hot Lotto on June 24, 2004; 2by2 on February 2, 2006; Mega Millions on January 31, 2010; and Lucky for Life on January 31, 2016. These games have a range of minimum jackpots of $22,000 to $40 million, and a range of overall odds of winning a prize of 1:3.59 to 1:24.87. The Wild Card 2 game ended February 24, 2016.

For the 2015-17 biennium, the lottery projected sales of $59,620,000 and transfers of $16,985,000 ($15.5 million - general fund; $640,000 - compulsive gambling prevention and treatment fund; and $845,000 - multi-jurisdictional drug task force grant fund). Unaudited ticket sales through February 2016, the first 8 months of the fiscal year, were $25.3 million. This amount reflected a $6.47 million increase in sales or a 34 percent increase compared to the same period last year. The lottery was on track to exceed projected sales of $33 million and transfers of $9,242,500 for the first year of the biennium.

During the 2015-17 biennium, the lottery has done or has plans to implement 50 self-service lottery terminals to the retailer base, allowing players to purchase and check lottery products without utilizing a retailer clerk; re-launch the Powerball game with better overall odds, more winners, and bigger jackpots; add a new online game that will complement the product mix; develop and conduct innovative promotional and public awareness campaigns to attract new places and strengthen the current player/lottery relationship; build membership in the Players Club to reward players for continued patronage; increase awareness of the subscription service; continue to monitor security policies and procedures to ensure the integrity and fairness of operations; and research the ability to introduce a mobile application.

The lottery must partner with one or more other government-authorized lotteries to conduct a game. This restriction generally limits the lottery to games sponsored by the Multi-State Lottery Association. Because the Multi-State Lottery Association may not have a broad range of games available to fulfill the lottery's desired product mix in the future, the report indicated if the Multi-State Lottery Association were to disband, the lottery may not have an adequate number of games to continue operation.

STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM

The committee received a report from the Department of Human Services regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. During presentation of the report, a representative of the State Hospital questioned the value of the report being provided by the Department of Human Services. The committee received testimony indicating the report may be more beneficial coming from the Department of Corrections and Rehabilitation.

Since 2007, the Department of Corrections and Rehabilitation has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. Over the past 24 months, 53 hospital staff received 1,644 hours of basic security training. Another 35 staff received additional specialized security training, including hostage negotiation techniques. According to the report, 24 hour perimeter surveillance occurs through camera and a roving officer. In addition, the James River Correctional Center Security Director provides security consultation for environmental and procedural improvements to the sex offender treatment program and Tompkins Rehabilitation Center.

REPORT ON SUBSTANCE EXPOSED NEWBORNS

The Task Force on Substance Exposed Newborns was created as a result of 2015 Senate Bill No. 2367 for the purpose of researching the impact of substance abuse and neonatal withdrawal syndrome, evaluating effective strategies for treatment and prevention, and providing policy recommendations. The task force was comprised of representatives of state agencies, the Legislative Assembly, medical providers, nonprofit entities focused on children's health and well-being, Indian tribes, law enforcement, and the foster care community.

The task force recommended the state provide funding for programs to help ensure the safety of neonatal abstinence syndrome (NAS) infants after the infants return home. Prevent Child Abuse North Dakota operates the North Dakota Maternal, Infant, and Early Childhood Home Visiting program, which is funded through a federal grant and which provides parent support and education during home visits. The task force identified a considerable lack of data on the incidence of NAS and the effectiveness of measures to prevent and address it. The task force indicated a belief that it is critical to establish baseline incidence data and to develop trend data to determine whether and to what extent the incidence is increasing or decreasing over time.

The task force's recommendations include several methods for identifying substance abusers at risk of becoming pregnant, pregnant substance abusers, babies with NAS, and children suffering long-term effects of in utero exposure to substances. The recommendations also include several methods for ensuring appropriate services are available and provided to women, babies, and children identified as needing the services. This will require continuing educational campaigns directed to health care providers, women, and the general public, as well as requiring the provision of multiple services for mothers who abuse substances and babies suffering from NAS.

DEPARTMENT OF HUMAN SERVICES REPORT ON REVOKED OBLIGOR DRIVER'S LICENSES

Section 50-09-08.6 provides for the suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey a subpoena. The report indicated that before 2003, suspensions were something that courts could order, but it was used sparingly and therefore did not deter obligors from becoming delinquent.

The report stated the goal of the license suspension process is to discourage obligors from missing a payment and to encourage obligors to avoid suspension by working and paying current support on a regular basis plus an affordable amount toward the past-due child support. For this reason, a delinquent obligor receives written notice 30 days before a license is suspended. During that time, the obligor has an opportunity to pay the arrears in full, contact child support enforcement and sign a payment plan, or seek review by a court. The report indicated child support enforcement has the authority to approve temporary restricted licenses allowing an obligor to drive to work. The report concluded the license supervision process is a proven, effective enforcement technique. After comparing the state's laws with child support enforcement in the other states, the Director of the Child Support Division of the Department of Human Services recommended making no changes to the state's laws relating to child support enforcement.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee is a statutorily created committee of the Legislative Management. Pursuant to North Dakota Century Code Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Management. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state money is in compliance with law, legislative intent, and sound financial practices.
- Provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to Section 54-35-02.2, the committee is charged with studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Senators Jerry Klein (Chairman), Judy Lee, and David O'Connell and Representatives Patrick R. Hatlestad, Jerry Kelsh, Keith Kempenich, Lawrence R. Klemin, Gary Kreidt, Andrew G. Maragos, Bob Martinson, Corey Mock, Mike Nathe, Marvin E. Nelson, Chet Pollert, and Robert J. Skarphol.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

During the 2015-16 interim, the State Auditor's office and independent accounting firms presented 7 performance audit and evaluation reports and 115 financial or information technology application audit reports. During the 2015 regular legislative session, the committee received one additional performance audit and evaluation report. An additional 57 audit reports were filed with the committee, but were not formally presented. The committee's policy is to hear only audit reports relating to major agencies and audit reports containing major recommendations. However, other audit reports are presented at the request of any committee member. At the end of this report is a listing of the audit reports accepted by the committee.

The committee was assigned the following duties and responsibilities for the 2015-16 interim:

1. Receive the annual audit report for the State Fair Association (Section 4-02.1-18).
2. Receive a report from the State Board of Higher Education on the operations of Dickinson State University (Section 40 of 2015 House Bill No. 1003. The Legislative Management assigned this responsibility to the committee).
3. Receive the annual audit report from any corporation or limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state (Sections 10-19.1-152 and 45-10.2-115).
4. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Life Skills and Transition Center (Sections 50-06.3-08 and 25-04-17).
5. Receive the annual audited financial statements and economic impact reports from the North Dakota low-risk incentive fund. (Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee).
6. Receive an electronic copy of the audit report from the North Dakota Stockmen's Association at least once every 2 years (Section 4.1-72-08 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee).
7. Receive the performance audit report of Job Service North Dakota upon the request of the committee (Section 52-02-18).
8. Determine necessary performance audits (Section 54-10-01(4) provides the State Auditor is to perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component units, as determined necessary by the State Auditor or the committee, and provides for the committee to approve the State Auditor's hiring of a consultant to assist with conducting a performance audit).
9. Determine the frequency of audits or reviews of state agencies (Section 54-10-01(2)).
10. Determine when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).

11. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
12. Study and review audit reports submitted by the State Auditor (Section 54-35-02.2).

GUIDELINES FOR AUDITS OF STATE AGENCIES

The committee received information on and reviewed guidelines developed by prior Legislative Audit and Fiscal Review Committees relating to state agency and institution audits performed by the State Auditor's office and independent certified public accountants. For audit periods covering fiscal years since June 30, 2006, auditors of state agencies and institutions are requested to address the following six audit questions:

1. What type of opinion was issued on the financial statements?
2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?
3. Was internal control adequate and functioning effectively?
4. Were there any indications of lack of efficiency in financial operations and management of the agency?
5. Has action been taken on findings and recommendations included in prior audit reports?
6. Was a management letter issued? If so, provide a summary, including any recommendations and the management responses.

In addition, auditors are asked to communicate to the committee eight issues which identify:

1. Significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.
2. Significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditors' conclusions regarding the reasonableness of those estimates.
3. Significant audit adjustments.
4. Disagreements with management, whether resolved to the auditors' satisfaction, relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.
5. Serious difficulties encountered in performing the audit.
6. Major issues discussed with management prior to retention.
7. Management consultations with other accountants about auditing and accounting matters.
8. High-risk information technology systems critical to operations based on the auditors' overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by auditors are directly related to the operations of an information technology system.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and to conduct a review of the material included in the *State of North Dakota Comprehensive Annual Financial Report*. The *State of North Dakota Comprehensive Annual Financial Report* contains the audited financial statements for state agencies and institutions. An unmodified opinion was issued on the financial statements. The committee received and accepted the *State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2014*, and the *State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2015*.

NORTH DAKOTA UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT

The committee received the North Dakota University System's annual financial report for the fiscal year ended June 30, 2014. An unqualified opinion was issued on the financial statements. As of June 30, 2014, the University System had total assets of $1.567 billion and total liabilities of $448 million, resulting in total net assets of $1.12 billion. The total net assets increased $78 million during fiscal year 2014. The annual degree credit headcount enrollment for the fall 2013 semester was 48,015, a decrease of 188 from the previous fall enrollment of 48,203.

The committee received the University System's annual financial report for the fiscal year ended June 30, 2015. An unqualified opinion was issued on the financial statements. As of June 30, 2015, the University System had total assets of $1.775 billion and total liabilities of $550 million, resulting in total net assets of $1.225 billion. The total net assets increased $163.3 million during fiscal year 2015. The annual degree credit headcount enrollment for the fall 2014 semester was 47,660, a decrease of 355 from the previous fall enrollment of 48,015.

PERFORMANCE AUDITS AND EVALUATIONS

University System Institutions - Use of Tuition Waivers and Student Stipends

The committee received the performance audit report of the University System institutions use of tuition waivers and student stipends. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objectives of the audit were to provide:

- The number and amount of waivers or discounts granted at each institution due to statutory requirements.
- The number and amount of waivers or discounts granted at each institution due to reciprocity agreements with other states.
- The number and amount of waivers or discounts granted at each institution to graduate students.
- The average amount of tuition waived or discounted for each student receiving a waiver or waivers, including the average percentage of total tuition waivers compared to gross tuition charges for the students by institution.
- The number and amount of waivers granted at the University of North Dakota School of Medicine and Health Sciences.
- The number and amount of stipends or other payments awarded at each institution to graduate students, including the source of funds.
- The number of students that received both a waiver or discount and a stipend or other payment at each institution.
- The number of internships at each institution and those paid or subsidized by state internship programs.
- The number of Dickinson State University employees terminated during the 2009-11 biennium and the number of those employees that have been rehired.
- Recommendations for improving accountability for the awarding of tuition waivers and student stipends.
- Recommendations for improvements to the information included in student unit records and to the use of the information.
- The number and amount of waivers or discounts for resident students, nonresident students, and international students.

The audit period for which information was reviewed was the 2010-11 through 2013-14 academic years.

The committee learned a major finding of the audit was that improvements were needed for tuition discounts, waivers, and student stipends to increase uniformity and establish accountability among the institutions. The State Auditor's office established definitions for purposes of the audit because of inconsistent terminology used among the various institutions. Discount was defined as a reduction in the tuition rate prior to the charge being applied to a student's account. Waiver was defined as a reduction in the tuition charged after being applied to a student's account and no money is received or transferred. Stipend was defined as a payment made to a graduate student for work performed in the field of study. Internship was defined as any practical or work experience related to the program for which a student may receive academic credit and which is outside of the normal classroom setting. The committee learned, for the 2010-11 through 2013-14 academic years, University System institutions granted approximately $420 million of discounts and $130 million of tuition waivers. Discounts were available to individuals from 20 other states and 2 Canadian provinces. Tuition waivers granted were equivalent to 12 percent of the total tuition charged.

The performance audit recommended the State Board of Higher Education:

1. Establish common definitions within the University System for discounts, waivers, and stipends and review coding of discounts, waivers, and stipends.
2. Require institutions to establish policies and procedures for institutional tuition waivers, which should include eligibility, application process, selection criteria, awarding process, and monitoring.
3. Ensure all criteria are clearly defined for tuition waivers established in board policy.
4. Establish a waiver policy for institution employee spouse or dependents and University System personnel.
5. Establish policies for cultural diversity, international, graduate, and other common institutional tuition waiver types.
6. Establish limits on the amount of tuition waivers institutions can award.
7. Identify and define the relevant student information required and expected for reporting purposes.

8. Provide authority to an individual to identify the necessary student data to be obtained, which includes:

   Authorizing the individual to establish standards related to consistent student data entry for the entire University System.

   Requiring all institutions to follow the established standards.

9. Adequately monitor institutions for compliance with policies, procedures, and standards.

10. Define internship for the entire University System and require a reporting method to readily identify internships at institutions.

The committee accepted the performance audit of the University System institutions use of tuition waivers and student stipends.

University System Improvements to the Use of Waivers and Student Stipends at University System Institutions

The committee received a report from a representative of the University System regarding its progress toward addressing audit findings and recommendations from the performance audit report on the use of waivers and student stipends at University System institutions. The committee learned the State Board of Higher Education has recommended the University System implement the recommendations provided in the audit report as outlined. The committee also learned the University System hired a project manager to address the audit findings and recommendations, including data inconsistency issues at institutions and entities under its control, and to assist with developing policies and procedures that will correct inconsistencies across campuses.

Department of Trust Lands - Energy Infrastructure and Impact Office

The committee received the performance audit report of the Department of Trust Lands Energy Infrastructure and Impact Office. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the audit was to determine if the Energy Infrastructure and Impact Office effectively administers its grants, including distributions of funds and compliance with legislative intent. The audit period for which information was reviewed was January 2010 through April 2012.

Article IX of the Constitution of North Dakota created the Board of University and School Lands. The members of the board include the Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Treasurer. The board has the authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund pursuant to Section 15-01-02(6). In addition, the board is allowed to create an advisory committee to assist with making grant award determinations. Grants awarded annually may not exceed 60 percent of the biennial appropriation for energy infrastructure and impact grants. The Department of Trust Lands serves as the administrative agency for the board. The Energy Infrastructure and Impact Office was created in 1979 as a division within the Department of Trust Lands pursuant to Section 57-62-04. The Director of the Energy Infrastructure and Impact Office is appointed by the board, and the powers and duties of the office include:

- Developing a plan for assistance through financial grants for services facilities to counties, cities, school districts, and other political subdivisions in coal development and oil and gas development impact areas;
- Establishing procedures and providing proper forms to political subdivisions for use in making applications for impact assistance;
- Receiving and reviewing applications for impact assistance;
- Making recommendations to the Board of University and School Lands for grants to political subdivisions in oil and gas development impact areas based on identified needs and other sources of revenue available to the political subdivision; and
- Making disbursements for grants awarded by the Board of University and School Lands.

The committee learned the statutory mission of the Energy Infrastructure and Impact Office is to assist local political subdivisions in response to the needs directly as a result of actual or anticipated extraordinary expenditures caused by energy development and its associated growth. Programs include a grant program for oil- and gas-impacted political subdivisions and a low-interest loan program for coal-impacted political subdivisions. The Board of University and School Lands approved approximately $124 million of impact grants for the 2011-13 biennium and $240 million for the 2013-15 biennium. Grants approved by the board were provided to address infrastructure and to provide permanent housing and public safety improvements. In addition, some grants were provided for rural transportation, critical education construction, and safety projects.

The committee learned a major finding of the audit was that aspects of grant administration functions were operating ineffectively.

The performance audit recommended the Department of Trust Lands Energy Infrastructure and Impact Office:

1. Establish procedures for political subdivisions to use in making applications for energy infrastructure and impact grant funds set aside for emergencies and contingencies, and ensure the procedures are effectively communicated.
2. Ensure the application screening process for energy infrastructure and impact grants is transparent and provides for fair and equitable treatment of all applications, including establishing a grant application screening process to identify completed applications meeting the eligibility requirements, scoring only completed applications meeting the eligibility requirements, re-evaluating the grant application scoring criteria to ensure criteria are reasonable, providing a method for awarding priority points, separating compound criteria, defining the point scale to be used for scoring, and ensuring the screening process is documented.
3. Ensure recommendations of energy infrastructure and impact grants to the Board of University and School Lands comply with eligibility requirements.
4. Ensure all eligible applications for a grant round are given consideration before making recommendations to the Board of University and School Lands.
5. Ensure projects recommended to the Board of University and School Lands are achievable at the proposed funding levels.
6. Ensure the needs of entities provided priority in law are adequately addressed before consideration is given to other eligible political subdivisions.
7. Include contingencies in the recommendations made to the Board of University and School Lands when grant application project costs for larger projects are based on estimates rather than actual bids.
8. Ensure energy infrastructure and impact grants awarded annually do not exceed the state law maximum.
9. Request the Board of University and School Lands pass a motion outlining the authority granted to the Department of Trust Lands related to scope changes of Board of University and School Lands awards and ensure all required scope changes are submitted to the Board of University and School Lands for approval.
10. Ensure grant payments are limited to the reimbursement of expenditures for projects outlined in the grant application and local match requirements and special conditions of the grant award are met, requests for reimbursement are adequately supported, and expenditures claimed for reimbursement are not reimbursed twice.
11. Obtain status updates for grants with outstanding balances in a more cost-effective manner by requiring status reports or telephone discussions, conduct site visits for grant awards based on risk of political subdivision or project, and ensure site visit documentation clearly identifies the grant award being monitored and the status of the project relating to the intent of the grant application.
12. Obtain a legal interpretation of 2013 Session Laws, Chapter 471, § 9, relating to distributions to counties experiencing new oil- and gas-development activities to determine if other counties were eligible for a distribution, and the county that was provided a distribution was eligible.
13. Ensure advisory committees assisting the Board of University and School Lands with grant determinations comply with open meeting laws.

The committee accepted the performance audit of the Department of Trust Lands Energy Infrastructure and Impact Office.

Department of Trust Lands - Trust Assets and Department Resources

The committee received the performance audit report of the Department of Trust Lands trust assets and department resources. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the audit was to determine if the department is obtaining, accounting for, and using resources efficiently and effectively, including the administration of the state's mineral interests and lease auctions; grazing and agriculture leases, rights-of-way, and site reclamation; management of assets in trust funds and distributions from trust funds; and mineral royalty collections, mineral-related payments, surface rents, and nonproducing leases. The audit period for which information was reviewed was July 1, 2011, through June 30, 2015.

In 1889 Congress passed the Enabling Act, which provided land grants to the state of North Dakota for the support of the common schools, colleges, universities, the State Capitol, and other public institutions. Section 10 of the Act granted land sections 16 and 36 in every township to the state for the support of common schools. The total land grant for common schools included 2.5 million acres. Sections 12, 14, 16, and 17 of the Act granted land to the state for the support of colleges, universities, the State Capitol, and other public institutions. The total land grant for colleges, universities, the State Capitol, and other public institutions included 668,000 acres. Approximately 80 percent of the land granted to the state has been sold since 1889. The state reserved no mineral rights for land sold prior to 1939, 5 percent of the mineral rights for land sold between 1939 and 1941, 50 percent of the mineral rights for land sold between 1941 and 1960, and reserved all mineral rights for land sold after 1960.

Article IX of the Constitution of North Dakota created the Board of University and School Lands to control the assets. The members of the board include the Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Treasurer. Pursuant to Section 15-01-02(6), the board is authorized with:

1. Full control of the selection, appraisement, rental, sale, disposal, and management of:

   Lands donated or granted by or received from the United States or from any other source for the support and maintenance of the common schools.

   All lands which fall to the state by escheat.

   All lands donated or granted by or received from the United States or from any other source for the maintenance of the educational, penal, or charitable institutions.

   All lands acquired by the state through the investment of the permanent school funds of the state as the result of mortgage foreclosure or otherwise.

2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in item 1.

3. Full control of such percent of the proceeds of any sale of public lands as may be granted to the state by the United States on such sale.

4. Full control of the proceeds of any property that fall to the state by escheat and of the proceeds of all gifts and donations to the state for the support or maintenance of the common schools, and of all other property otherwise acquired by the state for the maintenance of the common schools. Any gift to the state not specifically appropriated to any other purpose must be considered as a gift for the support and maintenance of the common schools.

5. Authority to expend moneys for the purpose of making refunds in cases in which an error has been made by the board, or a person dealing with the board, with regard to any of the lands, minerals, funds, proceeds, or any other kind of property managed by the board. Money expended to make refunds must come from the same fund or account into which the money to be refunded was originally placed.

The Department of Trust Lands serves as the administrative agency for the board. The department manages approximately 656,000 surface acres of the original land grants and 51,000 surface acres of land acquired through foreclosure and other means. In addition, the department manages mineral rights for 2.6 million acres of land. The department holds public auctions for tracts of land and enters into leases for the use of surface land or for rights to mineral development. Surface lands are leased through public auctions for uses including grazing, agriculture, right-of-ways, saltwater disposal wells, and gravel mining. Mineral rights are leased through public auctions for uses including extraction and production of oil, gas, coal, and other minerals. Each tract of land is assigned to a trust. Each tract of land being leased generates income for that trust. The department manages trusts and tracts of land for various beneficiaries. The 13 permanent educational trust funds established to provide ongoing funding for education include common schools (K-12 public education), Ellendale State College, Mayville State University, North Dakota State College of Science, North Dakota State University, North Dakota Vision Services - School for the Blind, School for the Deaf, School of Mines, State Hospital, University of North Dakota, Valley City State University, Veterans' Home, and the North Dakota Youth Correctional Center. The seven beneficiaries of the Ellendale State College trust fund include Dakota College at Bottineau, Dickinson State University, Minot State University, North Dakota State College of Science, School for the Blind, State Hospital, and the Veterans' Home. In addition, the department manages trust funds for the state or other beneficiaries pursuant to state law, including the Capitol building fund, coal development trust fund, Indian cultural education trust, and strategic investment and improvements fund.

Four areas of trust assets and department resources were audited, including surface and mineral areas, financial areas, human resource areas, and additional areas needing improvement. The committee learned major findings of the audit were that the department was not obtaining, accounting for, and using certain resources efficiently and effectively, and the department was not assigning land tracts to the correct trust.

The performance audit recommended the Department of Trust Lands:

1. Ensure tracts of land managed by the department are assigned to the correct trust and obtain guidance from legal counsel on correcting net assets and past distributions for trusts incorrectly assigned to tracts.
2. Conduct a formal review of oil and gas royalty payments to ensure amounts received were based on the correct decimal interest, and establish a periodic review to ensure operators are using the correct decimal interest.
3. Ensure oil and gas royalty payments are correctly allocated to the proper trusts, and obtain guidance from legal counsel on correcting net assets and past distributions for royalty payment allocation errors.
4. Ensure information submitted with oil and gas royalty payments is consistently obtained in an electronic format and includes all necessary information to adequately monitor payment amounts, and conduct audits of oil and gas operators submitting royalty payments to the department.
5. Establish an interest rate to be assessed on late oil and gas royalty payments, and a policy identifying the circumstances under which interest will be assessed.
6. Ensure penalties are consistently assessed on late oil and gas royalty payments and that calculations are accurate.
7. Monitor changes made to information in the minerals database to ensure changes are appropriate and adequately documented, and ensure lease agreements are appropriately updated when changes occur.
8. Ensure the minimum opening bids for pastureland result in a "fair market" return.
9. Analyze the use of additional online auctions, including costs associated with online versus live auctions, and use the auction process determined to be more beneficial to the trusts.
10. Ensure agreements are entered into and information is obtained for inspections not conducted by the department on state-owned tracts, and appropriate action is taken when violations or other concerns are identified on surface tracts.
11. Comply with Century Code requirements relating to classifying all land owned by the state or its instrumentalities according to its highest and best use, or take appropriate action to modify the requirement of classifying all land owned by the state or its instrumentalities.
12. Ensure fiduciary responsibilities are fulfilled, ensure public funds are used in an appropriate manner, and enhance the organizational culture of accountability.
13. Ensure compliance with state procurement laws, rules, and policies.
14. Ensure payments for services are made pursuant to a written contract or agreement, perform a risk analysis for all contracts and agreements to ensure appropriate insurance provisions are included, include applicable terms and conditions within contracts and agreements as recommended by the Attorney General's office, and ensure appropriate reviews are performed by legal counsel.
15. Ensure direct costs are applied to the appropriate trust, program, and activity, and ensure nondirect costs are allocated in an appropriate manner to trusts, programs, and activities.
16. Conduct a formal fraud risk assessment as required by Office of Management and Budget policy.
17. Avoid actions resulting in or creating the appearance of losing independence or impartiality, and actions that create an adverse effect on the integrity of the Board of University and School Lands or department.
18. Ensure individuals hired into classified, nontemporary positions meet the minimum qualifications for the job class as required by North Dakota Administrative Code.
19. Follow Human Resource Management Services' hiring process best practices and provide proper training to employees involved in the hiring process.
20. Comply with veterans' preference hiring requirements pursuant to Century Code.
21. Comply with legislative intent for use of authorized full-time equivalent positions.
22. Comply with salary administration requirements pursuant to Administrative Code.
23. Comply with Session Laws requirements related to general legislative salary increases and Administrative Code requirements related to annual employee performance evaluations.
24. Establish an effective process for evaluating employees' performance.

25. Ensure appropriate information technology systems exist, user manuals are established, and systems are used to the fullest extent possible.
26. Establish formal policies and procedures, use a standardized format for policies and procedures, and review policies and procedures periodically to ensure information is current and relevant.
27. Ensure policies and procedures are available to all employees in a centralized location, and require all employees to periodically review department policies and procedures and signify acknowledgment in writing.
28. Perform ongoing monitoring of the design and operating effectiveness of the department's internal control procedures.
29. In conjunction with representatives of the State Historical Society, review records and identify permanently retained records and records with archival value, and transfer applicable records to State Archives.

The committee accepted the performance audit of the Department of Trust Lands trust assets and department resources.

Department of Trust Lands - Unclaimed Property

The committee received the performance audit report of the Department of Trust Lands unclaimed property function. The performance audit was conducted by the State Auditor's office pursuant to authority within Chapter 54-10. The objective of the audit was to determine if the Department of Trust Lands is effectively administering unclaimed property, including claims payments. The audit period reviewed was July 1, 2011, through June 30, 2015.

Unclaimed property is property held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than the established time frame for the type of property. Unclaimed property may include a check, unpaid wage, stock, an amount payable under the terms of an insurance policy, or contents of a safe deposit box. A holder may include a bank, insurance company, hospital, utility company, retailer, or local government. An owner is a person or entity with a legal or equitable interest in property subject to the unclaimed property law. Since 1975 it has been the responsibility of the Unclaimed Property Division of the Department of Trust Lands to assist individuals with identifying property presumed abandoned. The administrator of the division is responsible for the operations of unclaimed property. The division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the state. The 1981 Uniform Unclaimed Property Act, created by the national Uniform Law Commission, was adopted by the state in 1985. The Act directs unclaimed or abandoned funds to be turned over to the unclaimed property program after a predetermined period of inactivity or lost contact between a business and the rightful owner.

The following schedule provides information regarding the amounts that were collected in unclaimed property and amount paid in claims for the 2007-09 through 2013-15 bienniums.

	2007-09 Biennium	**2009-11 Biennium**	**2011-13 Biennium**	**2013-15 Biennium**
Collected	$8.9 million	$9.3 million	$10.1 million	$15.7 million
Claimed	$3.6 million	$3.3 million	$4.0 million	$4.9 million
Percentage of amount collected that was claimed	40.4%	35.5%	39.6%	31.2%

The committee learned a major finding of the audit was that aspects of the unclaimed property program were operating ineffectively.

The performance audit recommended the Department of Trust Lands:

1. Ensure complete and accurate resources are available to persons searching for unclaimed property.
2. Increase efforts to locate owners of unclaimed property, and ensure efforts to locate owners are done in a fair and consistent manner.
3. Monitor abandoned property reporting information from entities in the state and conduct audits of entities in the state to ensure abandoned property is appropriately turned over to the department.
4. Provide state entities proper guidance and training on unclaimed property requirements.
5. Eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and monitor compliance.
6. Comply with state law requirements and provide written consent to holders if property is to be submitted to the department prior to the property being presumed abandoned and ensure property is held until the proper time has passed for property to be presumed abandoned.

7. Ensure unclaimed property data is complete, accurate, and consistently entered.
8. Receipt and maintain a complete list of unclaimed property consistently and appropriately.
9. Ensure unclaimed tangible property received is accounted for timely and comply with requirements for publishing notice in the newspaper.
10. Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of the property value and take appropriate action to lower the aggregate reporting amount.
11. Adequately safeguard unclaimed property submitted to the department.
12. Adequately safeguard confidential and sensitive information obtained and maintained by the department.
13. Process claims for unclaimed property consistently and appropriately.
14. Eliminate the requirement that certain owners pay a fee to receive their unclaimed property, which has not been sold or liquidated by the department.
15. Comply with state law requirements related to unclaimed property in a state agency's name and ensure the Budget Section is provided a complete list of state agencies not submitting a claim for property after a year of being notified, not providing state agencies the "donation" option, and no longer publishing state agencies in the annual notice of property.
16. Conduct periodic sales of unclaimed property and dispose of property with minimal value.
17. Take appropriate action to establish holder, owner, and department requirements within Administrative Code for unclaimed property.
18. Ensure proper records management series and appropriate disposal of records are used for unclaimed property.
19. Ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the department is unable to operate the unclaimed property program in this manner, the department should take appropriate action to attempt to remove the function from its responsibilities.

The committee accepted the performance audit of the Department of Trust Lands unclaimed property.

Department of Trust Lands Update

Later in the interim, the committee received an update from the Department of Trust Lands on the status of implementing the performance audit recommendations. The committee learned the department has developed a tool to record and review its progress in addressing audit findings. The committee learned the department has implemented many of the recommendations. The committee learned the department has also hired a consultant to assist with other process and system improvements.

Medicaid Provider and Recipient Fraud and Abuse Performance Audit Followup

The committee received the followup report to the Medicaid performance audit. The original performance audit was presented to the committee in October 2010. The audit was conducted to determine if the Department of Human Services adequately identifies and pursues Medicaid provider and recipient fraud. The followup report indicated 8 of the original recommendations have been fully implemented, 11 recommendations have been partially implemented, and 2 recommendations have not been implemented. The two recommendations not implemented relate to the Surveillance and Utilization Review System Unit being organized outside the control of other Medicaid operations and requesting a new Medicaid Fraud Control Unit waiver from the federal government. The committee learned the department is waiting for information from the United States Department of Health and Human Services Office of Inspector General regarding the ability of the state to continue to operate under conditions that exempt the state from needing a Medicaid Fraud Control Unit. The committee learned the Medicaid management information system "go-live" date was in October 2015. The committee accepted the followup report of the Medicaid performance audit.

Dickinson State University Performance Audit Followup

The committee received the followup report to the Dickinson State University performance audit. The original performance audit was presented to the committee in March 2012. The audit was conducted to determine if Dickinson State University has established an adequate system for monitoring operations. The followup report indicated 19 of the original recommendations have been fully implemented, 11 recommendations have been partially implemented, and 1 recommendation had not been implemented relating to improvements in the procurement of services. The committee learned two of the original recommendations are no longer applicable relating to awarding Roughrider scholarships and improving international recruiting agent agreements. The committee accepted the followup report of the Dickinson State University performance audit.

State Department of Health State-Supplied Vaccines Performance Audit Followup

The committee received the followup report to the State Department of Health state-supplied vaccines performance audit. The original performance audit was presented to the committee in March 2012. Free vaccines are made available to providers through the federal vaccines for children program or the federal Section 317 vaccine program. The vaccines for children program is intended to provide vaccines to a child who is 18 years old or younger and is an American Indian or Alaska Native eligible or enrolled in Medicaid, has no health insurance, or is underinsured. The Section 317 vaccine program is intended to provide vaccines to underinsured children and adolescents that are not served by the vaccines for children program and uninsured and underinsured adults. For a provider to receive free vaccines, the provider must enroll annually with the State Department of Health's prevention partnership program. Providers must agree to 13 conditions listed on the enrollment form. The audit was conducted to determine if state-supplied vaccines were used in compliance with agreed upon terms and conditions by the provider. The followup report indicated that all five recommendations have been fully implemented. The committee accepted the followup report of the State Department of Health performance audit.

State Water Commission - Water Appropriation Division Regulation of Industrial Water Use Performance Audit Followup

The committee received the followup audit report to the State Water Commission's Water Appropriation Division and industrial use permits performance audit. The original performance audits were presented to the committee in January 2013 relating to the Water Appropriation Division, and in July 2013 relating to the permitting process. The Water Appropriation Division is a component of the State Engineer's office with designated responsibilities, including administering and processing water rights, adjudicating and evaluating water rights, monitoring water resources, disseminating water resource information, developing community water supplies, conducting water resource research, and identifying and evaluating potential water supplies for economic development. The water permitting process is a complex science-based process, and many of the state's groundwater aquifers are at advanced stages of development. The decision on pending water permit applications from aquifers can take 10 to 15 years of monitoring the aquifer's water-level response to pumping, water use monitoring, and climate data monitoring. The audit was conducted to help address performance gaps relating to industrial water use monitoring and reporting policies and procedures for calendar years 2010, 2011, and January through June 2012, and permitting policies and procedures. The followup report indicated 23 of the original recommendations have been fully implemented and 3 recommendations have been partially implemented. The committee accepted the followup report of the State Water Commission's Water Appropriation Division and industrial use permits performance audit.

INFORMATION TECHNOLOGY AUDITS

University System's Technology Security Audit and Vulnerability Assessment

The committee received the University System's technology security audit and vulnerability assessment report. The objective of the audit was to evaluate external and internal vulnerability assessments on the networks of the University System, including Bismarck State College, Dakota College at Bottineau, Dickinson State University, Lake Region State College, Mayville State University, Minot State University, North Dakota State College of Science, North Dakota State University, University of North Dakota, Valley City State University, Williston State College, and University System offices in Fargo, Bismarck, and Grand Forks. The period of the audit when information was reviewed was October 1 through October 31, 2014. The committee learned major findings of the audit and related recommendations related to unsupported operating systems, missing software patches or required upgrades, easily guessed or default credentials, unsupported web servers, well-known internal network assessment exploits, publicly accessible web applications, firewall and network address translations, cross-site scripting, clear text password, session token in uniform resource locator (URL), structured query language (SQL) injection, and serialized object in hypertext transfer protocol (HTTP) message. The committee learned most of the findings and recommendations have been addressed by the University System and many of the corrections were made onsite during the audit. The committee learned external security testing should be done on an annual basis. The committee learned the University System is reviewing and rewriting existing policies and adding new policies because existing policies were not current. The committee learned information technology security may be improved if the University System and the campuses consolidate operational security and seek common policies and procedures. The committee accepted the audit of the University System's technology security audit and vulnerability assessment.

North Dakota Information Technology Security Audit Vulnerability Assessment and Penetration Testing

The committee received the *2016 North Dakota Information Technology Security Audit Vulnerability Assessment and Penetration Testing Executive Report*. The audit reviewed six major project tasks, including external vulnerability assessment, internal vulnerability assessment, application vulnerability assessment, security infrastructure review, incident response review, and penetration testing. The period of the audit when information was reviewed was January 1 through March 31, 2016. The audit provided recommendations relating to enforcing a structured enterprise patch management program; providing additional training to staff; updating, finalizing, and enforcing policies and procedures;

reviewing and updating all encryption; and creating, following, and enforcing an effective continuous monitoring policy and procedures. The committee learned security of the network could be improved by providing the Information Technology Department with the authority to disconnect noncompliant systems from the network. The committee learned the department has identified multiple systems that the department does not control which are misconfigured or outdated. The committee accepted the audit of the *2016 North Dakota Information Technology Security Audit Vulnerability Assessment and Penetration Testing Executive Report*.

Information Technology Department Service Organization Audit

The committee received the Information Technology Department service organization audit report. The audit was conducted by the State Auditor's office pursuant to authority within Section 54-10-01. The objective of the audit was to evaluate the fairness of the presentation of department's description of controls. The audit period when information was reviewed was April 1 through October 1, 2014. The audit found that the department lacks a formal risk assessment framework and that it does not conduct a periodic review of enabled ports or services. The audit provided recommendations relating to developing a systematic risk assessment framework, completing a periodic review of all enabled services and ports to identify if they are still being used, updating current policies to define escorted access to department facilities, and completing an annual review of the Enterprise Architecture standards. The committee accepted the audit of the Information Technology Department service organization audit.

Judicial Branch Odyssey Case Management System Information System Audit Followup

The committee received the followup report for the judicial branch Odyssey Case Management System Information System audit. The Odyssey Case Management System serves as the primary court case repository for all North Dakota district courts, including several municipal courts. The system houses the case docket information, case documents, and case financial information. The original audit was conducted to determine if system security is designed to provide access based on demonstrated need to view, add, change, or delete data; data is consistent, valid, and complete; and whether the accounts receivable process is properly managed. The followup report indicated two of the original recommendations have been fully implemented, and one of the original recommendations relating to reconciliation procedures had not been implemented. The committee accepted the followup report of the judicial branch Odyssey Case Management System Information System audit.

ConnectND - Campus Solutions System Audit Followup

The committee received the followup report for the ConnectND's Campus Solutions system. The Campus Solutions system provides a comprehensive web-based solution for academic activities of students, faculty, and staff. The modules include campus community, admissions and recruitment, student records, student financial aid, and student financials. In addition, the University System has several ancillary systems that support other activities relating to the system, including an online admission application; recruiting and admission management; a room scheduling system; billing, credit card, and echeck processing; a student housing system; and parking registration and enforcement. The original audit was conducted to determine if the pay classification system is enforced and managed by ConnectND Human Capital Management; payroll withholdings and deductions are handled timely and accurately; leave balances are maintained correctly by the system; and security roles are designed to provide access based on a demonstrated need to view, add, change, or delete data. The followup report indicated a significant finding relating to a new security role that was improperly implemented. The committee accepted the followup report of the ConnectND's Campus Solutions audit.

OTHER REPORTS

Department of Human Services Accounts Receivable Writeoffs

Pursuant to Sections 25-04-17 and 50-06.3-08, the Department of Human Services is required to report to the committee regarding accounts receivable writeoffs at the State Hospital, Life Skills and Transition Center, and human service centers as of June 30 of each fiscal year. Accounts receivable writeoffs as of June 30, 2014, were $6,004,587 at the State Hospital, $35,896 at the Life Skills and Transition Center, and $1,143,656 at the human service centers.

Accounts receivable writeoffs as of June 30, 2015, were $11,858,326 at the State Hospital, $112,462 at the Life Skills and Transition Center, and $1,149,509 at the human service centers.

Accounts receivable writeoffs as of June 30, 2016, were $5,624,255 at the State Hospital, $12,634 at the Life Skills and Transition Center, and $872,338 at the human service centers.

Electronic Viewing of Audit Reports

The committee discussed allowing audit reports to be presented and viewed electronically rather than on paper. The committee determined benefits of electronic reporting would include allowing members to view reports from their computer or an iPad and reducing the amount of paper the committee receives. The committee allowed selected audit reports to be presented in an electronic format.

OTHER INFORMATION

The committee received other information and reports relating to:

- Other state's nonresident tuition rates.
- The City of Lignite Fire Department water sales.
- North Dakota State University student enrollment increase projections.
- Dickinson State University plans to improve operations and financial stability.
- Examination report of the Bank of North Dakota from the Department of Financial Institutions.

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2015-16 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Accountancy, State Board of	June 30, 2014 and 2013	August 13, 2015
Accountancy, State Board of	June 30, 2015 and 2014	January 14, 2016
Addiction Counseling Examiners, Board of	June 30, 2015 and 2014	October 13, 2016
Adjutant General	June 30, 2014 and 2013	August 13, 2015
Administrative Hearings, Office of	June 30, 2015 and 2014	October 13, 2016
Aeronautics Commission, North Dakota	June 30, 2015 and 2014	October 13, 2016
Ag PACE fund	June 30, 2014 and 2013	August 13, 2015
Ag PACE fund	June 30, 2015 and 2014	January 14, 2016
Agriculture, Department of	June 30, 2015 and 2014	October 13, 2016
Architecture and Landscape Architecture, State Board of	June 30, 2015 and 2014	January 14, 2016
Attorney General	June 30, 2014 and 2013	August 13, 2015
Bank of North Dakota	June 30, 2014	August 13, 2015
Bank of North Dakota	June 30, 2015	October 13, 2016
Barley Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Beef Commission, North Dakota	June 30, 2014 and 2013	August 13, 2015
Beef Commission, North Dakota	June 30, 2015 and 2014	January 14, 2016
Beginning farmer revolving loan fund	December 31, 2014 and 2013	August 13, 2015
Beginning farmer revolving loan fund	December 31, 2015 and 2014	April 21, 2016
Bismarck State College	June 30, 2015 and 2014	October 13, 2016
Building Authority, State	June 30, 2014 and 2013	August 13, 2015
Building Authority, State	June 30, 2015 and 2014	January 14, 2016
Building Authority, State	June 30, 2016 and 2015	October 13, 2016
Career and Technical Education, Department of	June 30, 2015 and 2014	October 13, 2016
Chiropractic Examiners, State Board of	December 31, 2014	August 13, 2015
Clinical Laboratory Practice, State Board of	June 30, 2013 and 2012	August 13, 2015
College SAVE (Bank of North Dakota)	December 31, 2014 and 2013	August 13, 2015
College SAVE (Bank of North Dakota)	December 31, 2015 and 2014	October 13, 2016
Commerce, Department of	June 30, 2015 and 2014	October 13, 2016
Commission on Legal Counsel for Indigents	June 30, 2015 and 2014	October 13, 2016
Community water facility loan fund	December 31, 2014 and 2013	August 13, 2015
Community water facility loan fund	December 31, 2015 and 2014	April 21, 2016
Corn Utilization Council, North Dakota	June 30, 2014 and 2013	January 14, 2016
Cosmetology, State Board of	June 30, 2014	August 13, 2015
Council on the Arts, North Dakota	June 30, 2015 and 2014	October 13, 2016
Dairy Promotion Commission, North Dakota	June 30, 2014 and 2013	August 13, 2015
Dakota College at Bottineau	June 30, 2015 and 2014	October 13, 2016
Dental Examiners, State Board of	June 30, 2013 and 2012	August 13, 2015
Development Fund, Inc.	June 30, 2014 and 2013	August 13, 2015
Development Fund, Inc.	June 30, 2015 and 2014	January 14, 2016
Dickinson State University	June 30, 2015 and 2014	October 13, 2016
Dickinson State University performance audit followup	November 6, 2014	August 13, 2015
Dietetic Practice, Board of	September 30, 2015 and 2014	October 13, 2016
Dry Bean Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Dry Pea and Lentil Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Education Standards and Practices Board	June 30, 2012	April 21, 2016
Education Standards and Practices Board	June 30, 2013	April 21, 2016
Education Standards and Practices Board	June 30, 2014	October 13, 2016
Education Standards and Practices Board	June 30, 2015	October 13, 2016
Ethanol Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Examiners for Hearing Instrument Dispensers, State Board of	June 30, 2010, 2009, and 2008	August 13, 2015

Agency	Audit Report Date	Meeting Date Accepted
Examiners for Nursing Home Administrators, State Board of	June 30, 2014 and 2013	August 13, 2015
Examiners on Audiology and Speech-Language Pathology, Board of	June 30, 2014 and 2013	October 13, 2016
Financial Institutions, Department of	June 30, 2014 and 2013	August 13, 2015
Firefighter's Association, North Dakota	December 31, 2015 and 2014	October 13, 2016
Funeral Service, State Board of	June 30, 2014 and 2013	August 13, 2015
Game and Fish Department	June 30, 2014 and 2013	August 13, 2015
Governor's office	June 30, 2015 and 2014	April 21, 2016
Guaranteed Student Loan Program, North Dakota	September 30, 2014 and 2013	August 13, 2015
Guaranteed Student Loan Program, North Dakota	September 30, 2015 and 2014	April 21, 2016
Health, State Department of	June 30, 2015 and 2014	October 13, 2016
Health, State Department of - State-supplied vaccines performance audit followup	May 19, 2016	October 13, 2016
Highway Patrol	June 30, 2014 and 2013	August 13, 2015
Historical Society, State	June 30, 2014 and 2013	August 13, 2015
Housing Finance Agency	June 30, 2014 and 2013	August 13, 2015
Housing Finance Agency	June 30, 2015 and 2014	January 14, 2016
Housing incentive fund	June 30, 2014 and 2013	August 13, 2015
Housing incentive fund	June 30, 2015 and 2014	January 14, 2016
Human Services, Department of	June 30, 2015 and 2014	October 13, 2016
Human Services, Department of - Medicaid performance audit followup	September 26, 2014	August 13, 2015
Indian Affairs Commission	June 30, 2014 and 2013	August 13, 2015
Industrial Commission	June 30, 2015 and 2014	October 13, 2016
Information Technology Department	June 30, 2014 and 2013	August 13, 2015
Information Technology Department service organization audit	April 1, 2014 to October 1, 2014	January 14, 2016
Information technology security audit, vulnerability assessment, and penetration testing	January 1, 2016 to March 31, 2016	October 13, 2016
Job Service North Dakota	June 30, 2014 and 2013	August 13, 2015
Job Service North Dakota	June 30, 2015 and 2014	January 14, 2016
Judicial branch	June 30, 2015 and 2014	October 13, 2016
Labor and Human Rights, Department of	June 30, 2015 and 2014	October 13, 2016
Lake Region State College	June 30, 2015 and 2014	October 13, 2016
Law Examiners, State Board of	June 30, 2015 and 2014	October 13, 2016
Legislative Assembly	June 30, 2015 and 2014	January 14, 2016
Legislative Council	June 30, 2015 and 2014	January 14, 2016
Lottery, North Dakota	June 30, 2014 and 2013	August 13, 2015
Lottery, North Dakota	June 30, 2015 and 2014	April 21, 2016
Management and Budget, Office of	June 30, 2015 and 2014	April 21, 2016
Massage, Board of	June 30, 2015 and 2014	January 14, 2016
Mayville State University	June 30, 2015 and 2014	October 13, 2016
Medical Examiners, State Board of	December 31, 2013 and 2012	August 13, 2015
Medical facility infrastructure loan program	June 30, 2014 and 2013	August 13, 2015
Medical facility infrastructure loan program	June 30, 2015 and 2014	January 14, 2016
Milk Marketing Board	June 30, 2014 and 2013	August 13, 2015
Mill and Elevator Association	June 30, 2014 and 2013	August 13, 2015
Mill and Elevator Association	June 30, 2015 and 2014	January 14, 2016
Minot State University	June 30, 2015 and 2014	October 13, 2016
North Dakota State University	June 30, 2015 and 2014	October 13, 2016
North Dakota University System Annual Financial Report	June 30, 2014	August 13, 2015
North Dakota University System Annual Financial Report	June 30, 2015	April 21, 2016
North Dakota University System office	June 30, 2014 and 2013	August 13, 2015
North Dakota University System technology security audit and vulnerability assessment	December 31, 2014	January 29, 2015
Nursing, State Board of	June 30, 2012	October 13, 2016
Nursing, State Board of	June 30, 2013	October 13, 2016
Nursing, State Board of	June 30, 2014	October 13, 2016
Nursing, State Board of	June 30, 2015	October 13, 2016
Occupational Therapy Practice, State Board of	June 30, 2013 and 2012	August 13, 2015
Oilseed Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Optometry, State Board of	June 30, 2015, 2014, and 2013	April 21, 2016
PACE fund	June 30, 2014 and 2013	August 13, 2015
PACE fund	June 30, 2015 and 2014	January 14, 2016
Parks and Recreation Department	June 30, 2015 and 2014	October 13, 2016
Peace Officers Standards and Training Board	December 31, 2012 and 2011	August 13, 2015
Peace Officers Standards and Training Board	December 31, 2014 and 2013	April 21, 2016
Pharmacy, State Board of	June 30, 2012 and 2011	October 13, 2016

Agency	Audit Report Date	Meeting Date Accepted
Pharmacy, State Board of	June 30, 2013 and 2012	October 13, 2016
Pharmacy, State Board of	June 30, 2014 and 2013	October 13, 2016
Pharmacy, State Board of	June 30, 2015 and 2014	October 13, 2016
Physical Therapy, Board of	June 30, 2014 and 2013	August 13, 2015
Plumbing, State Board of	June 30, 2014	October 13, 2016
Plumbing, State Board of	June 30, 2015	October 13, 2016
Potato Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Private Investigative and Security Board	December 31, 2014 and 2013	January 14, 2016
Protection and Advocacy Project	June 30, 2014 and 2013	August 13, 2015
Psychologist Examiners, State Board of	June 30, 2015 and 2014	January 14, 2016
Public Employees Retirement System	June 30, 2014 and 2013	August 13, 2015
Public Employees Retirement System	June 30, 2015 and 2014	January 14, 2016
Public Employees Retirement System - Schedule of employer allocations and pension amounts by employer	June 30, 2014	August 13, 2015
Public Employees Retirement System - Schedule of employer allocations and pension amounts by employer	June 30, 2015	October 13, 2016
Public Finance Authority	December 31, 2014	August 13, 2015
Public Finance Authority	December 31, 2015	October 13, 2016
Public Instruction, Department of	June 30, 2015 and 2014	April 21, 2016
Public Service Commission	June 30, 2015 and 2014	October 13, 2016
Racing Commission, North Dakota	June 30, 2015 and 2014	October 13, 2016
Real Estate Appraiser Qualifications and Ethics Board	June 30, 2011, 2010, 2009, 2008, 2007, and 2006	April 21, 2016
Real Estate Commission, State	June 30, 2014	August 13, 2015
Real Estate Commission, State	June 30, 2015	January 14, 2016
Rebuilders loan program	June 30, 2014 and 2013	August 13, 2015
Rebuilders loan program	June 30, 2015 and 2014	January 14, 2016
Registration for Professional Engineers and Land Surveyors, State Board of	June 30, 2014	April 21, 2016
Respiratory Care, State Board of	January 31, 2015 and 2014	October 13, 2016
Retirement and Investment Office, State	June 30, 2014 and 2013	August 13, 2015
Retirement and Investment Office, State	June 30, 2015 and 2014	January 14, 2016
Retirement and Investment Office, State - Schedule of employer allocations and pension amounts by employer	June 30, 2014	August 13, 2015
Retirement and Investment Office, State - Teachers' Fund for Retirement - Schedules of employer allocations and pension amounts by employer	June 30, 2015	October 13, 2016
Secretary of State	June 30, 2014 and 2013	August 13, 2015
Securities Commissioner	June 30, 2014 and 2013	August 13, 2015
Seed Department, State	June 30, 2014 and 2013	August 13, 2015
Social Work Examiners, North Dakota Board of	June 30, 2015 and 2014	October 13, 2016
Soybean Council, North Dakota	June 30, 2014 and 2013	August 13, 2015
Soybean Council, North Dakota	June 30, 2015 and 2014	January 14, 2016
State Auditor	June 30, 2015 and 2014	January 14, 2016
State College of Science, North Dakota	June 30, 2015 and 2014	October 13, 2016
State Electrical Board	June 30, 2013 and 2012	August 13, 2015
State Fair Association, North Dakota	September 30, 2014 and 2013	August 13, 2015
State Fair Association, North Dakota	September 30, 2015 and 2014	January 14, 2016
State Treasurer	June 30, 2015 and 2014	April 21, 2016
Statewide Comprehensive Annual Financial Report	June 30, 2014	August 13, 2015
Statewide Comprehensive Annual Financial Report	June 30, 2015	April 21, 2016
Statewide single audit	June 30, 2014 and 2013	August 13, 2015
Stockmen's Association, North Dakota	December 31, 2015 and 2014	April 21, 2016
Student loan trust	June 30, 2014 and 2013	August 13, 2015
Student loan trust	June 30, 2015 and 2014	January 14, 2016
Tax Commissioner	June 30, 2015 and 2014	October 13, 2016
Tobacco Prevention and Control Policy, Center for	June 30, 2015 and 2014	October 13, 2016
Transportation, Department of	June 30, 2015 and 2014	October 13, 2016
University and School Lands, Board of	June 30, 2014 and 2013	August 13, 2015
University and School Lands, Board of	June 30, 2015 and 2014	January 14, 2016
University and School Lands, Board of - Department of Trust Lands trust assets and department resources performance audit	January 5, 2016	April 21, 2016
University and School Lands, Board of - Department of Trust Lands unclaimed property performance audit	January 5, 2016	April 21, 2016
University and School Lands, Board of - Energy Infrastructure and Impact Office of the Department of Trust Lands performance audit	November 6, 2015	April 21, 2016
University of North Dakota	June 30, 2015 and 2014	October 13, 2016
North Dakota University System institutions - Use of tuition waivers and student stipends performance audit	March 20, 2015	April 21, 2015

Agency	Audit Report Date	Meeting Date Accepted
Valley City State University	June 30, 2015 and 2014	October 13, 2016
Veterans' Affairs, Department of	June 30, 2014 and 2013	August 13, 2015
Veterans' Home	June 30, 2015 and 2014	October 13, 2016
Veterinary Medical Examiners, State Board of	June 30, 2014 and 2013	January 14, 2016
Water Commission, State	June 30, 2015 and 2014	October 13, 2016
Water Commission, State - Water Appropriation Division and regulation of industrial water use performance audit followup	September 21, 2016	October 13, 2016
Wheat Commission, State	June 30, 2014 and 2013	August 13, 2015
Williston State College	June 30, 2015 and 2014	October 13, 2016
Workforce Safety and Insurance	June 30, 2014 and 2013	August 13, 2015
Workforce Safety and Insurance	June 30, 2015 and 2014	April 21, 2016

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Management delegated to the Legislative Procedure and Arrangements Committee the Legislative Management's authority under North Dakota Century Code Section 54-35-11 to make arrangements for the 2017 legislative session. Legislative rules also are reviewed and updated under this authority. The Legislative Management also delegated to the committee the Legislative Management's:

1. Duty under Section 54-03-26 to determine the computer usage fee for legislators, and the authority to establish a policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council;
2. Power and duty under Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents and to control permanent displays in Memorial Hall and use of the legislative chambers;
3. Duty under Section 54-35-25 to establish a policy regarding promotional expenses made on behalf of the Legislative Assembly;
4. Responsibility under Section 54-03-20 to make recommendations to adjust legislative compensation amounts;
5. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
6. Responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce on goals and objectives of the Department of Commerce;
7. Responsibility under Section 46-02-05 to determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws;
8. Responsibility under Section 4-24-10 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
9. Responsibility under Section 4-35.2-04 to determine when the Agriculture Commissioner must report to the Agriculture Committees on the status of the pesticide container disposal program; and
10. Authority under Section 54-06-26 to establish guidelines for use of state telephones by legislative branch personnel.

The Legislative Management also assigned to the committee the responsibilities under 2009 Session Laws, Chapter 29, Section 5, and 2011 Session Laws, Chapter 1, Section 6, to administer the appropriations for legislative wing equipment and improvements. The Legislative Management designated the committee as the Legislative Ethics Committee under Section 54-35-02.8 with the responsibility to consider or prepare a legislative code of ethics.

The Legislative Management also assigned to the committee the responsibility to receive periodic reports from the State Court Administrator under Section 10 of 2015 Senate Bill No. 2015 regarding the status of the facility space expansion authorized by 2015 House Bill No. 1002. The Legislative Management assigned to the committee the authority under Section 1 of 2015 Senate Bill No. 2304 to request reports from the Friends of the North Dakota Governor's Residence regarding the fundraising plans of the task force and the progress of fundraising efforts for a new Governor's residence.

Committee members were Representatives Al Carlson (Chairman), Wesley R. Belter, Corey Mock, Kenton Onstad, and Don Vigesaa and Senators Robert Erbele, Joan Heckaman, Ray Holmberg, Jerry Klein, Mac Schneider, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management, after amendment to reflect suspending the State of the Judiciary and Tribal-State Relationship addresses, accepted the report for submission to the 65th Legislative Assembly.

LEGISLATIVE SPACE RENOVATION PROJECTS

Electrical and Fire and Safety Upgrades in Legislative Wing

The committee received information regarding necessary upgrades in the legislative wing to address areas in which electrical code or fire inspections revealed potential code violations. Eighty electrical receptacles in the House and Senate Chambers were identified as not meeting the requirements of the electrical code. The required upgrades were completed at a cost of approximately $90,000. The committee was informed the annual fire inspection identified several

minor items that were in violation of code provisions. Most of the items, including the proper placement of fire extinguishers, installation of upgraded exit signs, posting of occupancy limits, and installation of approved door handles and latches, were scheduled to be addressed as renovation work is completed within the legislative wing.

Data and Electrical Receptacles in Chamber Desks

The committee received information regarding the pop-up data and electrical receptacles on the desks in the House and Senate Chambers. Many of the receptacles have broken and are inconvenient to use. The committee approved the expenditure of funds to replace the receptacles. However, because a feasible alternative for replacing the receptacles without further cutting into the desk drawers could not be identified and due to budget constraints, the receptacles were not replaced.

Committee Room Video and Audio

During previous interims, the audio systems in the Harvest, Roughrider, Prairie, and Missouri River Rooms were upgraded to provide permanent in-room systems. The committee was informed there were approximately 10 meeting rooms for which in-room audio systems had not been installed. The committee approved the upgrading of the remaining committee rooms with in-room audio systems that included conference call access capability. The system upgrades were completed during the interim.

Brynhild Haugland Room Renovation

The committee received reports regarding the potential for renovating the Brynhild Haugland Room to make the room more functional and to enhance accessibility for the disabled. The stage in the front of the room generally has been used as a storage area and is viewed as wasted space. Because the room is at a lower level than the outside hall, a lift is located in one of the entry areas to provide access for the disabled. The committee was informed installation of access ramps in the entries would require ramps with landings which would extend the length of the ramps to almost 40 feet. To preserve the existing stairwell, a ramp could begin in the coat room and extend along the back of the stage. However, that option would involve cutting through an existing grade beam, which required additional examination by a structural engineer. The committee expressed its support for further study of options to renovate the Brynhild Haugland Room to remove the stage and install ramps to meet accessibility guidelines.

Legislative Media Room

The committee received information regarding the condition of the legislative media room. Although the media room, previously referred to as the press studio, had occasional small improvements, the room had not been renovated since 1981. Therefore, the technology used in the room was very outdated and the appearance of the room was deteriorating. The committee approved plans for renovating the media room, including installation of upgraded audio systems, improved lighting, and new acoustical panels. In addition, the committee approved the purchase of new tables, chairs, and a podium for the room. The approved upgrades were completed.

Judicial Wing Meeting Rooms

The 2015 Legislative Assembly included over $1 million in the judicial branch budget and the Office of Management and Budget appropriation to provide funds to renovate space in the judicial wing of the Capitol, which was vacated when the Information Technology Department moved to another facility. In addition, the Legislative Assembly appropriated $160,000 to the legislative branch to purchase and install audio and visual equipment, tables, chairs, and other furnishings in meeting rooms within the facility space expansion for the purpose of using three of the rooms for legislative committee rooms. Section 26 of Senate Bill No. 2015 amended Section 48-08-04 to provide the three additional meeting rooms comprising approximately 4,000 square feet in the judicial wing are legislative committee rooms under the jurisdiction of the legislative branch and may not be used during the interim between legislative sessions without the authorization of the Legislative Council.

The committee received periodic updates regarding the renovation process and held its final meeting of the interim in one of the newly created meeting rooms. The renovated meeting rooms consist of a large meeting space that may be separated into two meeting rooms, one of which will accommodate a committee of 19 members and one of which will accommodate a committee of 22 members, and a smaller room that will accommodate a committee of 13 members. The committee requested the Legislative Council to work with the State Court Administrator to develop a procedure under which the Legislative Council will grant authorization to the judicial branch to use the meeting rooms when the Legislative Assembly is not in session. The Legislative Management approved naming the new smaller rooms the Sheyenne River Room and the larger meeting room the Coteau A and Coteau B Rooms.

LEGISLATIVE SPACE USE

Legislative Chambers and Memorial Hall

Since 1981 the Legislative Management has delegated to the committee the responsibility under Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee has adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

During this interim, the committee approved requests for use of both chambers and legislative committee rooms by the North Dakota High School Activities Association State Student Congress on November 3-4, 2016, and November 2-3, 2017; use of the House Chamber by the Secretary of State for a statewide biennial election conference on February 17, 2016; use of the House and Senate Chambers for a bioterrorism training exercise on December 1, 2015; use of the House Chamber by the Department of Trust Lands for oil and gas lease auctions on February 2, May 3, August 2, and November 1, 2016; and use of the House balcony conference room by the Secretary of State for location of project management staff beginning in mid-February 2016 and ending by October 31, 2016.

The committee received a request to place an electronic device charging station in Memorial Hall. Although committee members were generally in favor of accepting the offer to install a charging station for use during the 2017 legislative session, committee members expressed concern with locating the charging station in Memorial Hall. The committee encouraged representatives of the Office of Management and Budget to work with the North Dakota Association of Rural Electric Cooperatives to find a suitable location, other than Memorial Hall, to place an electronic device charging station.

Under the guidelines, any permanent display in Memorial Hall is to be reviewed annually. Since removal of two statues and a replica of the Liberty Bell in 1984, Memorial Hall does not contain any permanent display. (The Liberty Bell is on display in the entrance/commons area of Century High School in Bismarck.)

Legislative Committee Rooms

Joint Rule 804 provides during a legislative session committee rooms may be used only for functions and activities of the legislative branch, but the Secretary of the Senate or the Chief Clerk of the House may grant a state agency permission to use a room at times and under conditions not interfering with the use of the room by the legislative branch. With respect to use during the interim, Section 48-08-04 applies and provides committee rooms may not be used without authorization of the Legislative Council.

The Legislative Management adopted the policy governing approval of use of committee rooms in 1998 and the committee has revised the policy as necessary to address issues that have arisen. The policy also applies to use of the legislative media room on the ground floor of the legislative wing whether during the session or during the interim. The policy is similar to that governing use of the chambers.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee reviewed specific questions or comments recorded during the 2015 legislative session regarding rules issues.

Senate and House Rules 203 - Deposit of Records with the Secretary of State

Senate and House Rules 203 require the Secretary of the Senate and the Chief Clerk of the House to deposit with the Secretary of State all books, bills, documents, resolutions, and papers in their possession. After the 2015 session, the Secretary of State questioned the need for the portion of the rule relating to deposit of the records because nothing has been delivered to him in all the years he has been in office.

The committee recommends amendment of Senate and House Rules 203 to remove the requirement that the Secretary of the Senate and the Chief Clerk of the House deposit with the Secretary of State all books, bills, documents, resolutions, and papers in their possession.

Senate and House Rules 206 - Legislative Employees

Senate and House Rules 206 list the various classes and numbers of legislative employees. Upon changes in the number of Senate and House employees from previous sessions, corresponding changes become necessary in the rule listing the number of employees.

The committee recommends amendment of Senate and House Rules 206 to change the numbers of various Senate and House employees to reflect the number of employees approved by the committee for the 2017 legislative session.

Senate and House Rules 319 - Roll Call Vote on Division of Bills

Senate and House Rules 319 provide a bill may be divided if each resulting division is so distinct and separate it can stand as a complete proposition without being rewritten. During the 2015 session, a question arose as to whether a roll call vote is required when voting on the divisions of a bill.

The committee recommends amendment of Senate and House Rules 319 to require roll call votes on all divisions of bills.

Joint Rule 206 - Consent Calendar

Joint Rule 206 provides a standing committee may report an uncontested bill or resolution or a contested resolution out of committee and may include in its report a recommendation for placement on the consent calendar. Members in the House indicated there has been some confusion regarding placing contested resolutions on the consent calendar. Recent House Speakers have indicated contested resolutions should not be placed on the consent calendar.

The committee recommends amendment of Joint Rule 206 to remove contested resolutions from the list of items that may be placed on the consent calendar.

Legislative Deadlines

The committee considered methods to conserve legislative days during the first week of the 2017 legislative session. The committee recommends holding committee hearings during the entire day on Wednesday and Thursday, January 4-5, 2017, and not holding floor sessions those days. Under the proposal, the State of the Judiciary address and the Tribal-State Relationship address will be held on Friday, January 6, which is scheduled to be the second legislative day.

The committee also recommends the amendment of any applicable legislative rules to change references to particular legislative days to keep legislative deadlines on the same dates, including deadlines for the introduction of bills. Under the proposed rule changes, the bill introduction deadlines will remain on Mondays.

Other Rules Proposals Considered

The committee reviewed proposals to allow the prime sponsor of a bill to testify regarding the intent of the bill at a hearing upon rereferral to the Appropriations Committees and to require a bill to be rereferred to a policy committee if a bill referred to the Appropriations Committee is proposed to be amended other than an amendment to the appropriation.

LEGISLATIVE INFORMATION SERVICES

Beginning with the 1985-86 interim, the committee has reviewed the cost of providing various printed documents to persons outside the legislative branch. Subscription fees have been established which approximate the cost of printing a set of the relevant documents during the previous legislative session. Representatives of the media, as determined under Joint Rule 803, and state agencies and institutions are not charged the fees for copies of bills and resolutions, daily journals, daily calendars, and committee hearing schedules. All of these documents are available on the legislative branch website.

Bills, Resolutions, and Journals Subscription

During the 2015 legislative session, 15 entities paid to receive a set of bills and resolutions from the bill and journal room, 4 entities paid to receive a set of journals, and 1 entity paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2017 legislative session--$350 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and re-engrossed bills and resolutions; $175 for a set of daily journals of the Senate and House; and $45 to receive the permanent index to the Senate and House journals.

The number of subscribers has been decreasing likely because all the documents are available on the legislative branch website. Because no subscriber has requested to have the documents mailed, the committee eliminated the option of mailing the documents to subscribers for a higher fee. The committee continued the policy provided under Joint Rule 603 that anyone can receive no more than five copies of a limited number of bills and resolutions without charge. The committee also requested the Legislative Council to communicate with representatives of state agencies to encourage the use of the electronic resources provided by the Legislative Council, including the use of documents available online and the use of the bill tracking service.

Bill Status Report Subscription

The printed version of the bill status system provides information on the progress of bills and resolutions, the sponsors of measures, and an index to the subject matter of measures. Two entities paid a $395 subscription fee to receive these reports from the bill and journal room during the 2013 legislative session and no one paid the $425 subscription fee to receive the reports in 2015.

The committee determined printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 2017 bill status reports and pay a $565 subscription fee. The committee eliminated the option of having the bill status reports mailed to subscribers. After consultation with representatives of the press, the committee eliminated the delivery of two copies of the *Bill Status Report* to the press room.

Committee Hearing Schedules and Daily Calendars Subscription

The committee continued the practice of making committee hearing schedules and daily calendars available at no charge. The committee also eliminated the option for mailing the committee hearing schedules or daily calendars.

Bill and Journal Room Photocopy Policy

Under the contract for providing secretarial, telephone message, and bill and journal room services, the contractor is to collect photocopying fees and transmit those fees to the Legislative Council office. Fees are not charged for providing a photocopy of a legislative document available for distribution to the public by personnel in the bill and journal room (bills, journals, calendars, and committee hearing schedules) nor for providing a photocopy to a legislator, a House or Senate employee, or a Legislative Council employee. Under the policy, the fee for photocopying service is 25 cents per page.

Incoming WATS Line Service

Beginning with the 1985 legislative session, incoming WATS lines have been provided for residents in the state to contact legislators or obtain information concerning legislative proposals. If all lines are in use or the call is made after regular business hours, a caller is given two options--one for staying on the line (if the call is during regular business hours) and one for leaving a message for legislators from the caller's district. This message feature is available 24 hours a day, 7 days a week during regular legislative sessions. It has been the policy to allow a caller to leave a message for the caller's local legislators (legislators from the caller's district and legislators of the city of the caller) and for specifically named legislators identified by the caller.

The committee made no changes regarding the incoming WATS line telephone message service for the 65th Legislative Assembly. Because the volume of incoming calls has decreased significantly over the last 15 years, the committee authorized the Legislative Council to reduce the number of phone lines if appropriate. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

LEGISLATIVE COMPENSATION

Legislative Compensation Review

In 2011 the Legislative Assembly repealed the law providing for a Legislative Compensation Commission and amended Section 54-03-20 to provide the Legislative Management is to make recommendations and submit any necessary legislation to adjust legislative compensation amounts.

The committee received information on legislative compensation and expenses, the process for adjusting compensation, legislative compensation increases compared to inflation and state employee salary increases, and legislative compensation levels in other states.

The general consensus of committee members was that the 2017-19 biennium budget of the Legislative Assembly should include funding for changes to legislative compensation to provide for adjustments of 1 percent in each year of the 2017-19 biennium, subject to revision if necessary during the 2017 legislative session to equal the percentage changes provided for state employee salary increases, and the necessary related statutory changes.

Legislator Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota, provides payment for necessary expenses of legislators may not exceed that allowed for other state employees. Section 54-03-20 provides the maximum lodging reimbursement for legislators during a regular legislative session may not exceed 30 times 70 percent of the daily lodging reimbursement for state employees and officials. Under that formula, legislators may receive up to $1,682 per month as reimbursement for lodging for the 2017 legislative session.

The committee made no changes to the legislative expense reimbursement policy that was in place for the previous three legislative sessions--reimbursable lodging expenses during a legislative session include utilities (electricity, heat, and water, including garbage collection and sewer charges), basic telephone service and telephone installation charges, snow removal expense, and furniture (rental of furniture and appliances and transit charges for moving rental furniture and appliances). In addition, the lodging expense reimbursement of two or more legislators sharing housing in a single dwelling is subject to approval by the Chairman of the Legislative Management, in accordance with Section 54-03-20.

LEGISLATIVE COMPUTERS

Legislator Data Plan Reimbursement

Before November 1, 2012, legislators received reimbursement for their mobile data plans two ways. The method for non-Verizon users required legislators to submit a voucher at least quarterly to the Legislative Council. The method for Verizon users required legislators to participate in split billing--their data costs associated with their plan were billed separately to the state of North Dakota.

During the 2011-12 interim, the committee approved a new method of reimbursing legislators for their data plans effective November 1, 2012. All participating legislators were required to submit a request form for reimbursement of their mobile data costs to the Legislative Council, identifying data costs associated with legislative business, along with a copy of their wireless carrier bill identifying the mobile data costs. The Legislative Council provided monthly reimbursement at that level until the legislator incurred a change in mobile data cost, contract, or vendor. At such time, the legislator was to submit a new request form to the Legislative Council for reimbursement of the legislator's mobile data costs, identifying data costs associated with legislative business, along with a new copy of the wireless carrier bill showing new mobile data costs.

During the 2013-14 interim, the committee reviewed the effects of the November 2012 policy. The "new" method of reimbursement was found to have its own problems. Plan configurations and options, as well as devices, change so frequently that legislators may not have selected the most cost-effective or friendly plan. In addition, constantly revising the policy to address every variation of plan configurations was not viewed as feasible. The committee approved discontinuance of the November 2012 policy and approved a $90 per month information technology stipend for legislators who sign an agreement that they will use the stipend for technology-related costs. The policy eliminates the need for split billing and state involvement with reimbursements. The committee recognized a stipend would be included in a member's taxable income, but broadband and mobile data expenses are deductible expenses and this should be a wash for a member.

The committee made no changes to the data plan reimbursement policy.

Legislative Computer Replacement

The majority leaders appointed a Computer Replacement Workgroup that focused on the types of laptop computers and tablets to be provided to legislators to replace computers used by legislators. With respect to the laptop computers, the workgroup focused on issues that included screen size, screen resolution, and weight. The workgroup recommended purchase of HP EliteBook 850 (having the 15.6-inch screen with 1920x1080 resolution and weighing 4.1 pounds). With respect to tablets, the workgroup focused on whether to purchase the iPad Pro (12.9-inch screen and 1.57 pounds) or the iPad Air 2 (9.7-inch screen and 0.98 pounds). The workgroup recommended the purchase of the 128 GB iPad Pro, which included a smart connector interface to allow for two-way exchange of power and data and Wi-Fi and cellular capable. The iPad Pro also was designed to use a smart pencil, which would be an option that each legislator could choose to purchase. The workgroup members viewed the larger iPad Pro as a step toward potentially moving away from the purchase of laptops during the next replacement cycle and purchasing only one device for legislators.

The committee approved the recommendations of the workgroup to purchase HP EliteBook 850 and Apple iPad Pro. The purchased devices resulted in savings of $110,582.

Personal Computer Use Policy

The committee reviewed the *Policy on Use of Personal Computers by Legislators*. The policy describes statutory restrictions on use of personal computers and governs use of state-owned personal computers and use of privately owned personal computers to access legislative information systems. The policy also addresses the use of tablet computers, provides for copying of legislator information to replacement computers, includes a procedure on purchase of old computers, and authorizes a fee for acquiring a replaced computer and a computer assistance fee.

The committee approved a change in the policy to reflect a statutory change in the definition of the term "political purpose." The committee also established the fees for purchase of replaced laptop computers ($250) and for the purchase of replaced iPads ($200).

Legislator Computer Training

The organizational session agenda approved by the committee continues the computer training classes for returning legislators beginning at 9:00 a.m. on Monday, December 5, 2016. The agenda also provides for a computer distribution and training session for new legislators at 3:15 p.m. on Monday, December 5, 2016, in addition to the traditional training sessions for new legislators on Wednesday, December 7, 2016. In addition, the agenda includes laptop computer and tablet training sessions on Tuesday and Wednesday, December 6-7, 2016, for returning legislators.

SESSION ARRANGEMENTS

Doctor of the Day Program

The committee accepted an offer by the North Dakota Medical Association to continue the doctor of the day program during the 2017 legislative session under the same arrangements as in the past. The association is planning to rely on physicians and residents from around the state to volunteer for the program and provide basic health care services and referrals on most days during which the Legislative Assembly is in session. The association also is planning to provide opportunities as in past sessions for legislators to participate in health screenings and other educational and wellness activities during the legislative session.

Legislator Wellness Program

Section 54-52.1-14 requires the Public Employees Retirement System (PERS) Board to develop an employer-based wellness program encouraging employers to adopt a board-approved program. The incentive for adoption of a program is a 1 percent of health insurance premium charge to agencies that do not participate in the program.

A wellness program must include the "mandatory activity" of communicating wellness materials provided by PERS and Sanford Health to individual employees on a monthly basis and promoting the PERS smoking cessation program to employees. In addition to this mandatory activity, different "optional" activities must be developed each year.

The comprehensive health assessment will be continued during the 2017 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during previous legislative sessions.

Legislators' Supplies

Stationery

Before 2013, every legislator had been given the option of receiving 250 sheets of regular (8.5 inches by 11 inches) or Monarch (7.5 inches by 10.5 inches) stationery and envelopes, 250 sheets of each type of stationery and envelopes, 500 sheets of either type of stationery and envelopes, or 250 or 500 envelopes. A legislator also was allowed to request an additional 500 sheets of stationery and 500 envelopes, up to 1,000 sheets and envelopes total. The Speaker, each leader, and each assistant leader were entitled to as much regular and Monarch stationery as needed. In addition, an electronic letterhead was provided to all legislators to use as a template to print correspondence on regular paper and envelopes.

That policy was changed for the 2013 legislative session. In 2012 the committee determined legislators should be provided with an electronic letterhead for use in printing letters and envelopes rather than receive stationery and envelopes through a contract printer. Because computers are provided to all legislators, the committee concluded there was little need for continuing to provide individualized stationery and envelopes when templates are provided for legislators to use through software on their computers.

The committee approved continuation of the policy of providing electronic letterhead for use in printing letters and envelopes.

Brief Bags

The committee approved continuation of the policy, first established in 1984, of providing a brief bag to each legislator on request. With respect to newly elected legislators, the request form will be included in the information packets distributed to newly elected legislators during the organizational session. During the 2013-14 interim, the committee approved use of a saddle brown leather brief bag that includes an embossed Great Seal on the side, "North Dakota Legislative Assembly" on the outside of the name tag, and the name of the legislator on the inside of the name tag. The upgrade to the higher-quality leather brief bag was approved with the intent the bags would last 4 years. The committee approved the purchase of additional leather brief bags for new legislators.

Capitol Access Cards

Since October 1999 the Capitol has operated under a security card system. Access to the Capitol on weekdays before 6:45 a.m. or after 5:30 p.m. or on weekends requires use of a security card to present near a reader that unlocks the door and records use of the card. Each security card is coded and a computerized record is kept of use. Since 2008 security access cards have been provided to legislators on request. A security card will be provided to a legislator who requests one and signs a form acknowledging receipt of the card.

Legislator Photo Identification Cards

Starting in 2010, each legislator was provided with a credit card-sized photo identification card containing the legislator's current legislative photograph, a current signature of the legislator, the legislative session WATS line number (1-888-635-3447), the Legislative Council telephone number, and the Legislative Council WATS line number. A photo identification card expires upon the expiration of the term of the legislator. New cards will be issued to newly elected legislators.

Legislator Photographs

The committee approved the invitation to bid for photography services to the 65th Legislative Assembly. The invitation to bid contained generally the same specifications as the contract for the 64th Legislative Assembly. The photographs of legislators are to be taken during the organizational session in 2016, and the photographs of the six elected legislative officers are to be taken during the first week of the regular session.

The photographer is to provide the digital image of the pose selected by the photographer to the Legislative Council by Wednesday, December 21, 2016, for use in updating the legislative branch website, and the photographer is to provide the digital image of the final pose to the Legislative Council by Friday, February 17, 2017.

The invitation to bid was sent to 263 photography firms in the state.

Eight photographers submitted bids--Glasser Images, Bismarck, $3,900 and $25 for each additional 11 x 14 inch frame; Anderson Photography, Crosby, $4,000 and $15 for each additional frame; and The Camera Lady Photography, Mandan, $9,280 and $25 for each additional frame; Gemar Photography, Minot, did not meet bid requirements; Kennedy's Photography, Jamestown, did not meet bid requirements; and J. Wooden Photography, Hebron, was received after the deadline. The committee awarded the contract to Anderson Photography.

Session Employee Positions

The committee reviewed the number of employee positions during the 2015 legislative session and historical changes in legislative employee positions since 1993. The 1993 legislative session was used as a base session because legislative employment peaked during that session, with 59 Senate employees and 77 House employees. During the 2013-14 interim, the committee recommended a total of 84 session employees--38 Senate employees and 46 House employees. The actual number of employee positions during the 2015 legislative session were 36 in the Senate and 48 in the House.

The committee reviewed and approved a legislative session employee position plan that proposed 37 Senate employee positions and 47 House employee positions during the 2017 legislative session. The plan:

- Continued the four staff assistants authorized for the majority leaders and the four staff assistants authorized for the minority leaders.
- Continued employment of a parking lot attendant by each house.
- Continued employment of the number of assistant sergeants-at-arms at the 2015 level.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2015 legislative session. The committee received information on the effect of providing a general increase reflecting the increases of 3 percent and 3 percent approved by the 64th Legislative Assembly for state employees in 2015 and 2016. In addition, because of budget allotments and uncertainty with respect to the status of the state budget for the remainder of the 2015-17 biennium, the committee was provided options for a 3 percent increase and a 3 percent and 2 percent increase.

The committee recommends the daily compensation rates during the 2017 legislative session be increased to reflect an increase of 3 percent. As a result of this recommendation, compensation will range from $115 to $196 per day ($14.38 to $24.50 per hour based on an 8-hour day). The committee recommends continuation of the authorization for employees to receive an additional $1 per day for each previous regular session employed, up to an additional $10 per day.

The committee recommends the concurrent resolution establishing employee positions continue the practice of not including specific names or identifying specific individuals. This type of resolution was first adopted in 1997 as a means to provide flexibility in the hiring of employees after adoption of the concurrent resolution. By designating positions and compensation levels, and not naming employees, an employment committee report that names an employee and designates the position is sufficient to identify that employee, the position, and the compensation level. The committee also recommends the concurrent resolution continue to refer to the generic position of "legislative assistant" in place of employees formerly classified as assistant sergeant-at-arms, supply room coordinator, desk page, page and bill book

clerk, information kiosk attendant, and parking lot attendant; continue to include provisions authorizing conversion of full-time positions to part-time positions; and continue to authorize the leaders to consolidate staff assistant positions.

Session Employee Orientation and Training

The Legislative Council staff will provide the orientation and training of legislative session employees. The training will be similar to that provided before the 2015 legislative session. Most employees needing specialized training will receive training in December.

Secretarial, Telephone Message, and Bill and Journal Room Services

Secretarial Services

In 1993 the joint secretarial pool consisted of the equivalent of 10.5 stenographers and typists and each house employed a chief stenographer and payroll clerk. Beginning with the 1995 legislative session, the Legislative Assembly has contracted with a third party to provide secretarial services. Beginning with the 2013 legislative session, the Legislative Council staff assumed the responsibility for handling payroll for the Legislative Assembly.

Telephone Message Services

In 1999 the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages. Beginning with the 2001 legislative session, the Legislative Assembly has contracted with a third party to provide telephone message services.

Bill and Journal Room Services

In 1995 the Legislative Assembly employed 12 bill and journal room clerks. Beginning with the 1997 legislative session, the Legislative Assembly has contracted with a third party to provide bill and journal room services.

Consolidated Services

Beginning with the 2001 legislative session, secretarial services and telephone message services were provided by the same contractor. Beginning with the 2003 legislative session, secretarial, telephone message, and bill and journal room services have been provided by one third-party contractor.

Since the first contract with a third party to provide services formerly provided by Legislative Assembly employees, the committee has reviewed workload to ensure appropriate levels of service. As a result of the decreasing number of documents prepared and the decreasing number of telephone calls received during recent legislative sessions, as well as recommendations of the third-party contractors to allow for cross-training of employees so they can be assigned among the areas as needed, the number of employees under contract to provide secretarial, telephone message, and bill and journal room services has been reduced as appropriate to meet workload.

The committee approved an invitation to bid for services during the 2017 legislative session to provide three and one-half employees for secretarial, telephone message, and bill and journal room services. Beginning with the 2015 legislative session, the secretarial and telephone message and the bill and journal room services were collocated in the bill and journal room.

The invitation to bid was sent to nine temporary personnel services. The committee received three bids--Labor Match Staffing Solutions, LLC bid $510.88 per day; Dakota Staffing Solutions bid $564.20 per day; and Spherion Staffing LLC bid $585.72 per day for approximately 75 days during the legislative session for three and one-half employees. Each bidder also provided a bid for one employee for 14 days before the convening of the legislative session. For that portion of the bid, Labor Match Staffing Solutions, LLC bid $144.48 per day, Dakota Staffing Solutions bid $165.20 per day, and Spherion Staffing LLC bid $164.72 per day. The hourly pay is at least $14.50 for the employees and at least $15 for the onsite supervisor.

The committee accepted the bid by Dakota Staffing Solutions to provide secretarial, telephone message, and bill and journal room services during the 2017 legislative session.

Secretarial Services Policy

To ensure proper use of secretarial services, the committee reviewed and approved the *Policy Regarding Secretarial Services to Legislators* last approved by the Legislative Management in November 2014. The policy points out secretarial service employees are not legislative employees; describes secretarial services as being available between 7:00 a.m. and 5:00 p.m.; provides for 24-hour turnaround of most projects; limits requests for transcripts of committee hearing tapes to the majority leader, as requested by the committee chairman when the committee clerk is unable to prepare minutes due to illness, disability, or absence; limits merge requests to 25 individual addresses unless otherwise approved by a majority leader or minority leader, as appropriate; and provides the procedure for any comment or complaint regarding the service. A copy of the policy is included in the legislators' information packets distributed during the organizational session.

Legislative Internship Program

Since 1969, the Legislative Assembly has sponsored a legislative internship program. During recent legislative sessions, the program has provided the Legislative Assembly with the assistance of law school students for a variety of tasks, especially the preparation of amendments, and has provided the students with a valuable educational experience. Although assigned to committees, the interns are supervised by the Legislative Council staff. Since the beginning of the program, each intern has received a stipend as a means of covering the expense of participating in the program.

The committee approved continuation of the program for the 65th Legislative Assembly, with up to 10 intern positions allocated to the University of North Dakota School of Law for assignment to the 3-day and 2-day standing committees. Because of concern the American Bar Association may not allow continuation of the stipend provided to law student interns, the committee authorized the Legislative Council to work with representatives of the School of Law to develop an approved reimbursement policy, with a maximum reimbursement of $3,500 per month for the 4-month program, which is an increase from the 2015 monthly reimbursement of $3,400.

The committee also approved the addition of up to four interns to be assigned to the Legislative Council fiscal staff under the same terms as the interns from the University of North Dakota School of Law.

Legislative Tour Guide Program

During the past 20 legislative sessions, the Legislative Council has operated a tour guide program that coordinates tours of the Legislative Assembly by high school groups. The tour guide program is used extensively by high school groups; however, upon request, other groups have been placed on the tour schedule. The committee approved the continuation of the tour guide program for the 2017 legislative session.

Chaplaincy Program

The Bismarck-Mandan Ministerial Association has coordinated the scheduling of a chaplain in each house to open the daily session with a prayer. Each chaplain receives a daily stipend of $25. The committee authorized the Legislative Council staff to invite the local ministerial associations to continue to schedule chaplains for opening prayers for both houses each day of the 2017 legislative session.

The committee authorized the Legislative Council staff to notify all legislators that they have until December 31, 2016, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2017 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2016 organizational session. Two major changes first made in 2002 were continued--convening the session on Monday rather than Tuesday and convening at 1:00 p.m. rather than 9:00 a.m. The agenda continues the provision of orientation classes for freshman legislators and computer training classes for returning legislators beginning at 9:00 a.m. on Monday. The agenda includes a computer distribution and training session for new legislators at 3:15 p.m. on Monday and additional computer distribution and training sessions on Tuesday and Wednesday.

State of the State Address

During the 2015 legislative session, the House and Senate convened in joint session at 1:00 p.m. on the first legislative day. Three escort committees were appointed--one for the Lieutenant Governor, one for the Chief Justice of the Supreme Court, and one for the Governor and First Lady. The Governor then presented his State of the State address.

The committee authorized the Legislative Council staff to contact the Governor for presentation of the State of the State address on the first legislative day of the 2017 legislative session.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the Supreme Court for the State of the Judiciary address to a joint session on the morning of the second legislative day, which is scheduled to be Friday, January 6, 2017. After acceptance of the report of the committee, the Legislative Management, by motion, determined that due to security concerns and the strain on law enforcement resources due to ongoing protests, the State of the Judiciary address would not be held in 2017.

Tribal-State Relationship Message

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to the 65th Legislative Assembly on the afternoon of the second legislative day, which is scheduled to be Friday, January 6, 2017. After acceptance of the report of the committee, the Legislative Management, by motion,

determined that due to security concerns and the strain on law enforcement resources due to ongoing protests, the Tribal-State Relationship address would not be held in 2017.

Agricultural Commodity Promotion Groups Report

The committee reviewed Section 4-24-10, which requires 14 agricultural commodity promotion groups to file a uniform report at a public hearing before the standing Agriculture Committee of each house. The committee designated the second legislative day the Agriculture Committees meet--Friday, January 6, 2017--as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

Agriculture Commissioner Report

The committee reviewed Section 4-35.2-04, which requires the Agriculture Commissioner to submit a biennial report to a joint meeting of the House and Senate Agriculture Committees on the status of the pesticide container disposal program. The committee determined the report should be made on the same day the committees receive the agricultural commodity promotion groups report--Friday, January 6, 2017.

Commissioner of Commerce Report

The committee reviewed Section 54-60-03, which requires the Commissioner of Commerce to report to a standing committee of each house as determined by the Legislative Management. The report is to be with respect to the Department of Commerce's goals, objectives, and activities. The committee determined the report should be made to the Industry, Business and Labor Committees on the third legislative day--Monday, January 9, 2017.

LEGISLATIVE ETHICS COMMITTEE

Section 54-35-02.8 requires the Legislative Management to appoint an ethics committee to consider or prepare a legislative code of ethics. Since 1995, the Legislative Management has appointed the Legislative Management (now Legislative Procedures and Arrangements) Committee as the Legislative Ethics Committee.

During the 1995-96 interim, the Legislative Management Committee reviewed North Dakota laws affecting legislative ethics. That committee recommended legislative rules declaring a legislative ethics policy urging members to maintain ethical standards and recognize the importance of standards contained in the rules, urging members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and requiring the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Assembly adopted those rules as Joint Rules 1001 through 1004.

The committee makes no recommendation regarding changes to the legislative code of ethics.

TELEPHONE USAGE GUIDELINES

Under Section 54-06-26, a state official or employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency. When a state official or employee is away from the official's or employee's residence for official state business and long-distance tolls would apply to a call to the city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. A state agency may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

The committee makes no recommendation for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

COUNCIL OF STATE GOVERNMENTS MIDWESTERN LEGISLATIVE CONFERENCE

The committee received a report regarding the 2015 Midwestern Legislative Conference which was hosted by North Dakota in Bismarck. The conference was held July 12-15, 2015. The 2015 Legislative Assembly appropriated $350,000 to support the conference and approximately $245,000 of that amount had been spent. Conference attendance was the second highest amount in recent years, with 453 persons attending. Private sector contributions to the conference exceeded the amount budgeted by approximately $100,000 and funds for conference registrations came in about $10,000 higher than expected.

CENSUS DATA REDISTRICTING PROJECT

The committee received a report regarding Phase I of the 2020 Census Redistricting Data Program, which provides the state the opportunity to provide updates to the United State Census Bureau relating to legislative district block boundaries. The committee approved state participation in Phase I of the 2020 Census Redistricting Data Program.

FRIENDS OF THE RESIDENCE FUNDRAISING REPORT

Senate Bill No. 2304 (2015) appropriated $5 million for the construction of a new residence for the Governor. Of that appropriation, $1 million was to come from donations. The committee received a report from a representative of the Friends of the North Dakota Governor's Residence regarding progress of the fundraising efforts for the Governor's residence. As of the date of the report in March 2016, the fundraising group had raised the first $500,000 required by law to start the construction project. Donations had ranged in size from $25 to $100,000.

POLITICAL SUBDIVISION TAXATION COMMITTEE

The Political Subdivision Taxation Committee was assigned four studies for the 2015-16 interim.

- Section 1 of 2015 Senate Bill No. 2057 directed the study of economic development tax incentives as provided in North Dakota Century Code Section 54-35-26.
- Section 12 of 2015 Senate Bill No. 2206 directed the study of transferring the costs of operating social services programs from county property tax levies to general fund appropriations.
- Section 1 of 2015 House Bill No. 1401 directed a study of the application of sales and use tax to purchases made by a contractor on behalf of an exempt entity.
- The Chairman of the Legislative Management directed the committee to study the income tax reciprocity agreement between North Dakota and Montana.

The Legislative Management directed the committee to receive two reports:

- An annual report from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2).
- An annual report from the Department of Commerce compiling reports from cities that have renaissance zone property included in a tax increment financing district, pursuant to Section 40-63-03(10).

Committee members were Representatives Jason Dockter (Chairman), Larry Bellew, Mark A. Dosch, Craig Headland, Kathy Hogan, Lawrence R. Klemin, Ben Koppelman, William E. Kretschmar, Mike Lefor, Alisa Mitskog, Gail Mooney, Naomi Muscha, Mike Nathe, Nathan Toman, and Robin Weisz and Senators Brad Bekkedahl, Randall A. Burckhard, Dwight Cook, Jim Dotzenrod, Tim Mathern, and Jessica Unruh.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Background

Section 54-35-26 provides for the review of specified economic development tax incentives by a Legislative Management interim committee. The Political Subdivision Taxation Committee was selected to review tax incentives during the 2015-16 interim.

The 2013-14 interim Taxation Committee studied state economic development tax exemptions, including consideration of whether a regular review process should be established for state economic development tax incentives to ensure regular consideration of whether incentives are serving the intended purpose for which they were created.

The committee received testimony from multiple parties to determine the best methods for evaluating tax incentives. The committee received testimony from a representative of The Pew Charitable Trusts regarding evaluation methods the organization had observed in other states and the effectiveness of those methods in evaluating tax incentives. The committee also arranged a panel discussion comprised of representatives from the City of Bismarck, The Pew Charitable Trusts, the Economic Development Association of North Dakota, and the Department of Commerce to further assess the best methods for evaluating incentives.

The committee reviewed data provided by representatives of the Tax Department and the Department of Commerce regarding the use of various tax credits, including a review of the number of claimants and amounts claimed. The committee also considered reviewing incentives in light of the original purpose for which the incentive was enacted. The committee acknowledged some credits were created at a time when the state was seeking to create jobs, a purpose which may no longer be necessary during times in which the economy is booming.

The bill that resulted from the committee's deliberations was Senate Bill No. 2057, which created Section 54-35-26.

Tax Incentive Evaluation Law

Section 54-35-26 directs a detailed analysis of 21 specified economic development tax incentives to ensure each incentive is serving the purpose for which it was created in a cost-effective and equitable manner. Each of the 21 incentives are to be reviewed within a 6-year period.

The interim committee is required to identify the incentives selected for review during the interim by October 1 of each odd-numbered year and identify the perceived goals of the Legislative Assembly in creating or altering each of the selected incentives and the data and testimony required to conduct an effective analysis of each incentive. The committee is required to take into account any or all of the following considerations relevant to the perceived goals of the incentives:

1. The extent of achievement of the goals of the incentive and whether unintended consequences have developed in its application.
2. Whether the design and application of the incentive can be improved.
3. The extent of complementary or duplicative effect of other incentives or governmental programs.
4. Whether the incentive has a positive influence on business behavior or rewards business behavior that is likely to have occurred without the incentive.
5. The effect of the incentive on the state economy, including the extent of primary sector operation of the recipient and any competitive disadvantage imposed or benefit conferred on other state businesses, any benefit or burden created for local government, and the extent of the incentive's benefit that flows to out-of-state concerns.
6. The employment opportunities generated by the incentive and the extent those represent career opportunities.
7. Whether the incentive is the most effective use of state resources to achieve desired goals.
8. If the committee's analysis of the incentive is constrained by lack of data, whether statutory or administrative changes should be made to improve collection and availability of data.

Incentives Selected for Review During the 2015-16 Interim

In selecting the incentives to be reviewed during the 2015-16 interim, the Political Subdivision Taxation Committee received input from representatives of the Department of Commerce and the Tax Department regarding incentives for first-round study selection. The committee reviewed incentives set to expire in 2017, all income tax incentives, and the manufacturing automation equipment tax credit.

Specifically, the committee selected the following 14 of the 21 incentives listed in Section 54-35-26:

1. Seed capital investment tax credit.
2. Angel fund investment tax credit.
3. Manufacturing automation equipment tax credit.
4. Wage and salary credit.
5. Microbusiness credit.
6. Soybean or canola crushing facility construction or retrofit credit.
7. Agricultural commodity processing facility investment tax credit.
8. Biodiesel fuel production facility construction or retrofit credit, biodiesel fuel blending credit, and biodiesel fuel equipment credit.
9. Renaissance zone credits and exemptions.
10. Research expense credit.
11. Internship program credit.
12. Workforce recruitment credit.
13. New jobs credit from income tax withholding.
14. New or expanding business exemption.

The committee also included the following four incentives in its review for the 2015-16 interim:

1. Telecommunications infrastructure sales tax exemption.
2. Electrical generating facilities sales tax exemption.
3. Certified nonprofit development corporation investment tax credit.
4. Geothermal, solar, wind, and biomass energy device tax credit.

The committee received background information for each of the selected incentives, which provided an explanation of the incentive, the perceived intent of the Legislative Assembly in creating or altering each incentive, and the data and testimony required to effectively review each incentive. To track its progress in receiving information necessary to determine whether incentives were meeting the purposes for which they were enacted, the committee also reviewed an evaluation chart listing the 18 selected incentives and the 8 considerations to be taken into account when reviewing each incentive.

Seed Capital Investment Tax Credit

Explanation of the Credit

Section 57-38.5-03 provides for a seed capital investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for qualified investments made in a qualifying business. A "qualifying business" is defined in Section 57-38.5-01 as a primary sector business, certified by the Director of the Department of Commerce's Division of Economic Development and Finance, which relies on innovation, research, or the development of new products and processes for growth and profitability. A qualifying business must be in compliance with the state's security laws and must be a for-profit corporation, passthrough entity, or joint venture with the majority of the businesses in-state employees being North Dakota residents. The business must have its principal office located in this state and perform the majority of its business activities in this state, with the exception of sales activities, or the business must have significant current or anticipated operations in North Dakota, which consist of employing more than 10 employees or reaching more than $150,000 in annual sales. A qualifying business does not include a real estate investment trust.

The credit is equal to 45 percent of the amount of the qualified investment which must be at risk in the qualifying business for at least 3 years. Investments placed in escrow will not qualify for the credit. A qualifying business must expend investment amounts for equipment, plant facilities, research and development, marketing, or working capital. A taxpayer, or a member of the taxpayer's immediate family, with substantial interests in qualified business, may not receive a credit for qualified investments in that business.

A taxpayer may claim no more than $112,500 in credits per taxable year. Credit amounts exceeding a taxpayer's liability may be carried forward for up to 4 taxable years. Credits determined at the passthrough entity level must be passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity. Pursuant to Section 57-38.5-07, a qualified business is required to file with the investor, the Tax Commissioner, and the Department of Commerce information identifying each taxpayer making an investment, the amount remitted by the taxpayer, and the date on which the investment was received by the qualifying business. The total aggregate amount of all seed capital investment tax credits allowed per year is limited to $3.5 million. If the amount of credits applied for exceed the maximum yearly cap, credits must be awarded based on the date each investment was received by a qualifying business. The maximum aggregate amount of qualified investments upon which the credit may be based may not exceed $500,000 for any one qualified business over any combination of tax years.

Perceived Goals in Creating or Altering the Credit

Provisions relating to the seed capital investment tax credit were first enacted in 1993. The total aggregate amount of all seed capital investment tax credits allowed per year was limited to $250,000. Upon a review of the legislative history relating to the enactment of the seed capital investment tax credit, the perceived goal of the Legislative Assembly in creating the credit was to stimulate private investment in new and growing North Dakota companies to help diversify and expand the state's economy. It was estimated the seed capital investment tax credit could result in a reduction in general fund revenues of up to $500,000 during the 1993-95 biennium.

The credit was amended in 2001 to increase the aggregate amount of allowable seed capital investment tax credits from $250,000 to $1,000,000 through calendar year 2002 and to $2,500,000 after calendar year 2002. The number of North Dakota employees a qualified business was required to employ was decreased to 10 and annual sales requirements were decreased to $150,000. An organization that attracted investments to build and own a value-added agricultural processing facility that it leased with an option to purchase to a primary sector business could also be classified as a qualified business.

The credit was amended in 2003 to eliminate the $250,000 limit per qualifying business and increase the available credit amount from 30 to 45 percent the amount of the qualifying investment. Amendments in 2005 further expanded the credit to allow it to be claimed by corporations and passthrough entities. Changes in 2005 also limited qualified investments in a qualified business for which a credit could be claimed to a maximum of $500,000. Changes to the credit in 2007 expanded the credit to allow investments by an angel fund to be eligible for the seed capital investment tax credit and reduced the maximum amount that could be claimed by a taxpayer to $112,500 per year. Provisions regarding certification of a qualified business by the Department of Commerce were also revised.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department regarding the number of taxpayers claiming the seed capital investment tax credit and the total amount of credits claimed. The number of taxpayers claiming the credit dropped substantially following the enactment of the angel fund investment tax credit. The credit was claimed on nearly 700 individual income tax returns in tax year 2006 and claimed on only 74 individual income tax returns in tax year 2014. The committee received information from representatives of the Department of Commerce indicating investors had earned credits totaling $14,530,233 since 2002 for investments in 70 companies. Of those 70 companies, 47 are still in operation. Information indicated the total direct, indirect, and induced employment related to the credit amounted to 655 jobs in 2014. The cost of offering the incentive as compared to the increase in state tax revenue resulting from the availability of the incentive equated to a 14.6 percent annual rate of return in 2014. The committee reviewed information indicating incentives similar to the seed capital investment tax credit are available in seven other states.

The committee received testimony from interested parties in favor of retaining the seed capital investment tax credit, including representatives of the Economic Development Association of North Dakota and the North Dakota State University Research and Technology Park. The committee also received testimony from business owners who received investments prompted by the availability of the credit. Testimony provided in favor of the credit indicated the credit is an important tool for supporting entrepreneurship, innovation, and startup companies in this state.

Committee members expressed a preference for the transparency provided in the seed capital program as compared to the angel fund program as it related to investments qualifying for the tax credit. Committee members also favored the assurances provided in the seed capital program that investments qualifying for a tax credit would be made in companies located in this state or in companies having current or projected substantial ties to this state. Committee members favored the seed capital's investment tax credit structure which only allowed an investor to receive a tax credit once an investment was actually received by a qualified business.

The committee also reviewed the definition of "primary sector business," as used in the seed capital investment tax credit and which is defined in nine sections of Century Code. The committee considered a bill draft to provide for a uniform definition of primary sector business. The committee received information from representatives of the Department of Commerce regarding the department's certification of primary sector businesses and a proposed definition for the creation of "new wealth." The committee reviewed a revised version of the bill draft which adds a definition for primary sector business to Title 1 of Century Code. The new definition requires a business to be certified by the Department of Commerce and employ knowledge or labor to add value to a product, process, or service to create new wealth. The bill draft defines "new wealth" as revenue generated by a business in this state through the sale of products or services to customers outside of this state or to customers in this state if the product was previously unavailable or difficult to obtain in this state.

Angel Fund Investment Tax Credit

Explanation of the Credit

Section 57-38-01.26 provides for an angel fund investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for investments made in an angel fund. A taxpayer may claim 45 percent of the amount remitted to each angel fund during the taxable year, up to an aggregate maximum amount of $45,000 per year. The amount of the credit an individual, married couple, passthrough entity and its affiliates, or other taxpayer is allowed to claim is capped at a lifetime limit of $500,000 in cumulative credits. An investment used to calculate an angel fund credit may not be used to calculate any other income tax deduction or credit.

A qualifying investment must be at risk in an angel fund for at least 3 years. Investments placed in escrow will not qualify for the credit. The credit must be claimed in the taxable year in which the investment is received by the angel fund. The amount of the credit claimed may not exceed the taxpayer's income tax liability. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the 7 succeeding taxable years. A taxpayer claiming this credit may not claim a credit resulting from an investment made by an angel fund in a qualified business for purposes of the seed capital or agricultural commodity processing facility investment tax credit.

Section 57-38-01.26 identifies the types of entities that may form an angel fund and provides a fund must be organized for the purpose of investing in at least three primary sector companies that are early and mid-stage private, nonpublicly traded enterprises with strong growth potential. An angel fund must consist of at least six accredited investors and may not have more than 25 percent of its capitalized investment assets owned by an individual investor. The angel fund must have at least $500,000 in commitments from accredited investors which is subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises. The angel fund must be member-managed or a manager-managed limited liability company and decisions regarding enterprises worthy of investment must be made on a group basis. The angel fund must be certified by the Department of Commerce and be in compliance with the security laws of this state.

Within 30 days of receiving an investment, an angel fund must file with the Tax Commissioner information identifying the taxpayer or passthrough entity making the investment, the amount of the investment, and the date payment was received by the angel fund for the investment. The angel fund also must file a report with the Tax Commissioner within 30 days following the end of each year supplying the name and principal place of business of each enterprise in which the angel fund has an investment. The Tax Commissioner may disclose to the Legislative Management the dollar amount remitted by each taxpayer or passthrough entity to an angel fund and the date each payment was received by the angel fund for the investment. The Tax Commissioner also may disclose to the Legislative Management information provided by the angel fund pertaining to the principal place of business of each enterprise in which the angel fund has an investment.

An angel fund is restricted from investing in an enterprise if any one angel fund investor, partner, shareholder, or member of a passthrough entity directly or indirectly owns more than 49 percent of the ownership interests in the enterprise. Investors are prohibited from receiving more than $5 million in aggregate credits from investments in a single angel fund during the life of the fund. A passthrough entity entitled to a credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level. Provisions regarding the sale, assignment, or transfer of the credit, were available only for investments made in the 2011 and 2012 tax years.

Perceived Goals in Creating or Altering the Credit

Provisions related to the angel fund investment tax credit were enacted in 2007. The perceived goal of the Legislative Assembly in creating the credit was to encourage investment in startup businesses by offering a tax credit to angel fund investors. The credit was described as an extension of the seed capital tax credit and was intended to stimulate private investment and grow startup or early stage companies. Companies targeted by angel fund investments were thought to be smaller companies that carried high-risk but also high-growth potential. The angel fund investment tax credit was viewed as a tool to create and maintain quality jobs and diversify a community's economic base. The estimated fiscal effect of the angel fund investment credit could not be determined during the 2007 legislative session.

Additional requirements were imposed on angel funds in 2009, including the requirement an angel fund be headquartered in this state; consist of at least six accredited investors, with no one investor owning more than 25 percent of the capitalized investment assets; have at least $500,000 in commitments from accredited investors; invest in a portfolio of at least three early or mid-stage private, nonpublicly traded enterprises; be member-managed; be certified by the Department of Commerce; and be in compliance with state securities laws. Angel funds were prohibited from investing in an enterprise if one angel fund investor owned more than 49 percent of the enterprise and the aggregate amount of credits that could be received by investors in a single angel fund was capped at a lifetime limit of $5 million.

The total lifetime amount of credits a taxpayer could obtain was placed at $150,000 per taxpayer in 2011 and the carryforward period for unused credits was extended from 4 to 7 years. Passthrough entities were added to the list of taxpayers able to claim the credit and up to $100,000 of an investor's credits were allowed to be sold or transferred to another taxpayer in the hopes of attracting more out-of-state capital to North Dakota. Reporting provisions also were added in 2011 requiring the Tax Commissioner to report to the Legislative Management during the 2011-12 and 2013-14 interims the number of in-state and out-of-state investors; the amount of each investment; and the amount of tax credits accrued, claimed, and transferred by each individual angel fund.

The lifetime credit limit was increased from $150,000 per taxpayer to $500,000 per taxpayer in 2013 and restrictions were added prohibiting angel funds from investing in real estate or real estate holding companies. Any angel fund making these types of investments, and certified before January 1, 2013, would be barred from being recertified.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department detailing the amount claimed in each tax year for the angel fund investment tax credit and the number of claimants. The committee also received information regarding angel funds from representatives of the Department of Commerce. Twenty-one angel funds have been certified by the Department of Commerce and since 2011, these angel funds have received investments that have earned investors $16,680,982 in income tax credits. The 21 angel funds certified by the department have invested in a total of 116 companies, 61 of which are North Dakota based and 55 of which were identified as out-of-state companies. Reporting requirements applicable to angel funds do not require angel funds to list the amount invested in each company. Limited information regarding the companies receiving angel fund investments also made it difficult for the committee to determine the amount of the credit's benefit that flows to out-of-state concerns. Incentives similar to the angel fund investment tax credit are found in 11 other states. Testimony regarding the angel fund credit available in Minnesota indicated nearly all available credits are being claimed under Minnesota's program despite the program restricting investments to in-state businesses.

The committee considered a bill draft that would have restricted angel funds from investing in an enterprise having its principal place of business located outside this state for purposes of an investment qualifying for the credit. The committee received testimony from angel fund industry representatives in opposition to eliminating an angel fund's ability to invest in out-of-state businesses for purposes of qualifying for the credit. Testimony indicated angel funds often syndicate deals with networks outside this state and investments in out-of-state companies can come back to add value to this state. Committee members cited examples of businesses that had benefited from out-of-state investments coming back to this state.

The committee considered multiple versions of a bill draft that would have required angel funds to invest in qualified businesses for purposes of angel fund investments qualifying for the credit and would have required the Director of the Department of Commerce to certify qualified businesses and make a list of qualified businesses publicly available. The bill draft would have added reporting requirements pertaining to the amount invested in qualified businesses and the date on which investments qualifying for the credit were received by a qualified business. The bill draft also would have incorporated additional compliance tools for the Tax Department and the Department of Commerce.

The committee considered a bill draft to sunset the availability of the angel fund investment tax credit for investments made after December 31, 2017, and increase allowable credit amounts and carryforward periods related to the seed capital investment tax credit. The bill draft allows angel funds to receive a credit for investments made through the seed capital investment tax program and amends provisions relating to the seed capital program by increasing the maximum amount of the credit allowed for all claimants from $3,500,000 to $15,000,000 per calendar year. The maximum amount that may be claimed per taxpayer also is increased from $112,500 to $225,000 per year and the carryforward period for any unused credits is expanded from 4 to 7 years. The maximum amount of qualified investments that may be received by a qualified business for all tax years is increased from $500,000 to $4,000,000 and additional reporting requirements are imposed on a qualified business to ensure the business continues to meet certain requirements in the 5-year period following the receipt of an investment qualifying for the tax credit.

The committee received testimony in favor of retaining the angel fund investment tax credit, including testimony from the Mayor of Jamestown, representatives of the Economic Development Association of North Dakota, the North Dakota State University Research and Technology Park, the University of North Dakota Center for Innovation Foundation, Great River Energy, the Midwest AgEnergy Group, and various business owners and angel fund representatives. The testimony indicated the credit is an important tool for supporting entrepreneurship, innovation, and startup companies in this state. Some individuals viewed the credit as a tool to create an equity capital industry in this state.

Some committee members expressed concern the intent of the credit was being misinterpreted. Committee members also expressed discomfort with a lack of transparency regarding where investment funds qualifying for the credit were being invested. Committee members highlighted a lack of restrictions attached to the credit's provisions which allowed investments by angel funds to be made for nearly any purpose with the exception of investments in real estate. Committee members reviewed information highlighting instances in which angel fund investments may have been made improperly in real estate ventures. Some committee members contended it did not appear angel funds were investing in the types of high-risk companies the Legislative Assembly intended angel funds to invest when the credit was enacted. Although committee members expressed appreciation for the risk angel fund investors are taking in investing in high-risk businesses, it was noted other taxpayers are taking a risk in subsidizing a 45 percent tax credit.

Electrical Generating Facilities Sales Tax Exemption

Explanation of the Exemption

Sections 57-39.2-04.2 and 57-40.2-04.2 provide a sales and use tax exemption for purchases of production equipment, building materials, and other tangible personal property used to add environmental upgrades or to construct or expand certain electrical generating facilities. The exemption is available for purchases used to upgrade, construct, or expand a wind-powered electrical generating facility if the facility will be completed before January 1, 2017, and has at least one single electrical energy generation unit with a nameplate capacity of 100 kilowatts or more. The exemption also is available for purchases used to upgrade, construct, or expand a coal-powered electrical generating facility if the facility converts coal from its natural or beneficiated form into electrical power and has at least one single electrical generation unit with a capacity of 50,000 kilowatts or more. For facilities powered by sources other than coal or wind, the exemption is available for purchases used to upgrade, construct, or expand an electrical generation facility if the facility produces electricity for resale or for consumption in a business activity and has at least one single electrical generation unit with a capacity of 100 kilowatts or more.

A facility operator may receive the sales tax exemption at the time of purchase if the operator applies for and receives a certificate from the Tax Commissioner verifying the materials the operator intends to purchase qualify for the exemption. If a certificate of exemption is not received prior to the operator making a purchase, the operator may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs the

tangible personal property or equipment, the facility operator may apply for a refund of the amount of sales or use tax paid by the contractor on qualifying items.

Perceived Goals in Creating or Altering the Exemption

Provisions relating to a sales and use tax exemption for purchases of production equipment and property used to construct a coal-powered electrical generation facility were enacted in 1991. The exemption was expanded in 2001 to extend to purchases made by operators of wind-powered electrical generating facilities completed before January 1, 2011, with a nameplate capacity of 100 kilowatts or more and at least one single electrical energy generation unit. The perceived goal of the Legislative Assembly in providing this exemption was to encourage economic development through the construction of new electrical generating facilities. In estimating the fiscal impact of the exemption, it was determined each wind tower could qualify for a sales tax exemption of approximately $30,000 based on the assumption materials subject to the exemption would cost roughly $600,000 per wind tower.

In 2005 the exemption was expanded to apply to machinery and equipment used to reduce emissions, increase efficiency, or enhance reliability at a new or existing oil refinery or gas processing plant. The exemption also was expanded to production equipment and materials purchased by a power plant operator for purposes of environmental upgrades or repowering. The definition of a "power plant" was broadened in 2007 to include any other types of electrical generating facility in addition to coal-powered and wind-powered electrical generating facilities. The exemption also was expanded to power plants using any type of coal, rather than only lignite coal. The capacity required for a power plant to receive the sales tax exemption was reduced and the exemption was allowed to be claimed upfront by a contractor. It was estimated the changes made in 2007 would result in a $2.4 million reduction in general fund revenues during the 2007-09 biennium based on the four qualifying plants under construction at that time.

In 2009 the exemption was amended to apply to purchases of equipment used by an electrical generating plant that converts beneficiated coal into electrical power. The deadline for purchasing materials used in the construction or expansion of a wind-powered facility was extended through December 31, 2014. The deadline for purchases relating to wind-powered facilities was extended in 2013 through December 31, 2016. The July 1, 2017, sunset date pertaining to the exemption for purchases made by operators of electrical generating plants converting beneficiated coal into electric power was removed in 2015.

Testimony and Committee Considerations

The committee selected the electrical generating facility sales tax exemption for review due to the July 1, 2017, sunset date associated with the sales tax exemption for materials used to construct or expand a wind-powered electrical generating facility. The amount of the sales tax exemption realized by all claimants from fiscal year 2011 to fiscal year 2015 could not be disclosed by representatives of the Tax Department due to confidentiality restrictions because fewer than five claimants utilized the exemption in each fiscal year. The committee received information from the Department of Commerce relating to a cost-benefit analysis pertaining to the wind-powered electrical generating facility exemption. The Department of Commerce used economic modeling and publically available data to estimate the costs and benefits associated with the exemption to be approximately $10.5 million, and estimated a 50 percent return on this cost within the first 2 years. The rate of return for each year thereafter was estimated at 7 percent per year. Incentives similar to the electrical generating facilities sales tax exemption are found in six other states.

The committee received testimony from representatives of the EmPower North Dakota Commission, Economic Development Association of North Dakota, Lignite Energy Council, and several representatives of the electrical generation industry expressing support for extending or eliminating the sunset date related to the wind-powered facility sales and use tax exemption. Testimony in favor of the exemption indicated the exemption has resulted in millions of dollars of savings for North Dakota ratepayers and has allowed the state to remain competitive with surrounding states. Testimony in favor the exemption would contend the exemption continue to be important in future years, especially in light of some of the changes that may occur as a result of the federal Environmental Protection Agency's Clean Power Plan. Committee members generally stressed the importance of refraining from making any recommendations that may hinder an individual's ability to obtain affordable electricity.

Because a bill draft was prepared for consideration by the interim Energy Development and Transmission Committee to remove the expiration date associated with the sales and use tax exemption for materials used to construct wind-powered electrical generating facilities, the committee did not consider a bill draft relating to the exemption.

Telecommunications Infrastructure Sales Tax Exemption

Explanation of the Exemption

Sections 57-39.2-04.9 and 57-40.2-03.3 provide a sales and use tax exemption for purchases of tangible personal property used to construct or expand telecommunications service infrastructure capable of providing telecommunications service in this state. The tangible personal property must be incorporated into telecommunications infrastructure owned by a telecommunications company to qualify for the exemption. A purchaser may receive the sales tax exemption at the

time of purchase if the purchaser applies for and receives a certificate from the Tax Commissioner verifying the tangible personal property the purchaser intends to purchase qualifies for the exemption. If a certificate of exemption is not received before the purchase, the telecommunications company may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs the tangible personal property, the telecommunications company may apply for a refund of the amount of sales or use tax paid by the contractor on qualifying items. The exemption is effective for purchases made through June 30, 2017.

Perceived Goals in Creating or Altering the Exemption

Provisions relating to the telecommunications infrastructure sales tax exemption were first discussed by the 2005-06 interim Economic Development Committee, which indicated business development may be hindered in areas of the state which lacked wireless service. Provisions relating to the telecommunications infrastructure sales tax exemption were first enacted in 2009 following a 2008-09 interim Industry, Business, and Labor Committee study of issues relating to wireless service providers and the impact of wireless service on the business climate in this state. The perceived goal of the Legislative Assembly in creating the exemption was to encourage telecommunications companies to expand telecommunications service infrastructure in the state. The exemption was viewed as a tool to help enhance business opportunities in rural areas. It was estimated the telecommunications infrastructure sales tax exemption would result in a reduction of $5.15 million in general fund and state aid distribution fund revenues during the 2009-11 biennium. The exemption was extended in 2011 to apply to taxable events occurring through December 31, 2012. The exemption was extended in 2013 to retroactively apply to purchases made after December 31, 2012, and through July 1, 2017. It was estimated the telecommunications infrastructure sales tax exemption would result in a reduction of $6.44 million in general fund and state aid distribution fund revenues during the 2011-13 and 2013-15 bienniums.

Testimony and Committee Considerations

Because the exemption is set to expire on July 1, 2017, the committee selected the telecommunications infrastructure sales tax exemption for review. The committee received information from representatives of the Tax Department detailing the amount of the exemption claimed in each tax year and the number of claimants. Incentives similar to the state's telecommunications infrastructure sales tax exemption are found in four other states. The Council of State Governments published an article highlighting how North Dakota has become a leader in the deployment of fiber optic Internet, and the National Conference of State Legislatures also highlighted the exemption provisions as an example after which other state's should model incentives.

The committee reviewed a bill draft to eliminate the sunset date attached to the telecommunications infrastructure sales tax exemption. The committee received comments from representatives of the Economic Development Association of North Dakota, North Dakota Association of Telecommunications Cooperatives, Information Technology Council of North Dakota, and several industry representatives in support of the bill draft. Testimony indicated the incentive assists in the deployment of resources to facilitate business operations across the state as well as citizen's use of the Internet.

Manufacturing Automation Equipment Income Tax Credit

Explanation of the Credit

Section 57-38-01.33 provides an income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating a manufacturing process in this state. The incentive is available to any income taxpayer certified by the Department of Commerce as a primary sector business. A primary sector business is defined as a business that employs knowledge or labor to add value to a product, process, or service that results in the creation of new wealth. The credit is equal to 20 percent of the cost of the manufacturing machinery and equipment purchased in the taxable year for purposes of automating a manufacturing process. Qualified expenditures for purchases of manufacturing machinery and equipment used to calculate the automation tax credit may not be used to calculate any other income tax deduction or credit allowed under Chapter 57-38.

Qualifying manufacturing machinery and equipment means new or used automation and robotic equipment. A qualifying purchase of manufacturing machinery and equipment includes items acquired under a capital lease, but only for the taxable year in which the lease was executed. Items acquired under a capital lease will be valued at fair market value at the time the lease was executed for purposes of calculating the credit. The credit must be claimed in the taxable year in which the manufacturing machinery and equipment was purchased and the amount of the credit claimed may not exceed the taxpayer's income tax liability. Any credit amount exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

The aggregate amount of allowed credits may not exceed $2,000,000 in calendar year 2015 and $500,000 in each year for calendar years 2016 and 2017. Any credits unclaimed at the end of a calendar year may be carried forward for dispersal in the succeeding calendar year. If credits in excess of the available amount are claimed, the Tax Commissioner is required to prorate the available credits among all claimants. Taxpayers filing a consolidated return may claim the credit against the aggregate North Dakota tax liability of all corporations included on the return. A passthrough entity

entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level.

The Department of Commerce is required to provide the Tax Commissioner the name, address, and federal identification number or social security number of each taxpayer approved as qualifying for the credit. The Department of Commerce also must provide the Tax Commissioner with a list of any items approved as qualified expenditures. The taxpayer must provide the Tax Commissioner the name, address, and federal identification number or social security number of the taxpayer making the purchase as well as a list of each item of machinery or equipment purchased for purposes of automation, the amount paid for each item, and the date on which payment for the item was made. This information must be provided with the taxpayer's return.

Perceived Goals in Creating or Altering the Credit

Provisions relating to an automation income tax credit for purchases of manufacturing machinery and equipment used to automate a manufacturing process were first discussed by the 2009-10 interim Workforce Committee as a result of the committee's study of technology-based entrepreneurship and economic development best practices. Provisions relating to the credit were enacted in 2011, but were made effective for the future tax years of 2013 through 2015. The credit was equal to 20 percent of costs incurred and the aggregate amount of credits allowed for all taxpayers was capped at $2 million in any calendar year. The perceived goals of the Legislative Assembly in creating this credit were to allow North Dakota manufacturing businesses to remain competitive, to advance the manufacturing sector, and to foster continued production in a labor constrained environment. The credit was amended in 2015 to extend through taxable year 2017; however, the previous $2,000,000 annual credit cap was reduced to $500,000 per year for calendar years 2016 and 2017. Distribution of the credit also was changed from a first-come first-serve basis to a system in which credits are prorated among all claimants. Any credit amounts left unclaimed at the end of the calendar year may be carried forward for distribution in the succeeding calendar year.

Testimony and Committee Considerations

Because the credit is set to expire at the end of 2017, the committee selected the manufacturing automation equipment income tax credit for review. The committee received information from representatives of the Department of Commerce indicating all $2,000,000 in available credits were awarded in calendar years 2013 and 2014, and $978,957 in credits were awarded in calendar year 2015 for a total amount of $4,978,957 awarded to 23 companies over the 3-year period. Incentives similar to the manufacturing automation equipment credit are found in seven other states.

The committee considered a bill draft to eliminate the sunset date attached to the manufacturing automation equipment income tax credit. The committee received comments from representatives of the Economic Development Association of North Dakota and the Greater Fargo/Moorhead Economic Development Corporation in support of the bill draft. Testimony in favor of continuing the credit highlighted success stories related to businesses using the automation tax credit and noted the credit is particularly important during times in which businesses face challenges recruiting and retaining a skilled workforce. The committee also received testimony expressing a desire to see the yearly amount of the credit restored to the $2 million threshold. Some committee members questioned whether economics drive a company's decision to automation more so than the availability of a tax incentive.

Certified Nonprofit Development Corporation Investment Tax Credit

Explanation of the Credit

Sections 10-33-124 and 57-38-01.17 provide a certified nonprofit development corporation investment credit. The income tax credit is available to corporate income taxpayers, with the exception of subchapter S corporations, in an amount equal to 25 percent of the amount paid for dues, membership fees, or contributions to a certified nonprofit development corporation. A taxpayer may claim no more than $2,000 in credits over any combination of taxable years and may carry forward any unused credits for up to 7 taxable years. A nonprofit development corporation must apply to the Secretary of State for certification; invest the majority of its funds in a primary sector business; and may not distribute any part of its income to its members, directors, or officers. For purposes of the credit, a primary sector business is a business that adds value to a product produced for resale through a process employing knowledge and labor. A certified nonprofit development corporation must file a form with the Tax Commissioner identifying each contributing taxpayer and the amount remitted within 30 days of receiving taxpayer funds. The contributing taxpayer must attach a copy of this form when claiming the credit.

Perceived Goals in Creating or Altering the Credit

Provisions relating to the certified nonprofit development corporation investment tax credit were enacted in 1989 and have remained substantially unchanged since enactment. The only notable changes to the credit included removing the ability of individuals, estates, trusts, and S corporations to claim the credit; making modifications in 1997 as part of the rewrite pertaining to the Nonprofit Corporations Act; and adding various reporting requirements in 2009.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department regarding the number of claimants and amount claimed in relation to the credit and indicated the credit was not claimed on any tax returns in tax years 2006 through 2014. The Secretary of State has certified eight nonprofit development corporations in this state. Credits similar to the certified nonprofit development corporate income tax credit are found in eight other states. The committee did not receive comments from parties supporting continuation of the credit. The committee considered a bill draft to repeal the certified nonprofit development corporate income tax credit due to the infrequency in which the credit is claimed and the lack of public interest in continuing the credit. The committee received testimony from a representative of the Economic Development Association of North Dakota in support of repealing the credit.

Wage and Salary Income Tax Credit

Explanation of the Credit

Section 57-38-30.1 provides for a corporate income tax credit for new industry, which is defined as "a corporate enterprise engaged in assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products or any combination thereof." The taxpayer must be a domestic corporation, which is not the result of a business reorganization or acquisition, incorporated in this state for the first time after January 1, 1969, or a foreign corporation that has received a certificate of authority to transact business in this state after January 1, 1969. The amount of the credit is equal to 1 percent of wages and salaries paid by the corporate income taxpayer in each of the first 3 tax years of operation and in an amount equal to one-half of 1 percent of wages and salaries paid by the taxpayer during tax years 4 and 5 of operation. A corporation receiving a property or income tax exemption pursuant to Chapter 40-57.1 as a new and expanding business is not eligible to receive the credit.

Perceived Goals in Creating or Altering the Credit

Provisions relating to a corporate income tax credit for new industry were enacted in 1969 and have remained substantially unchanged since enactment. The perceived goal of the Legislative Assembly in creating this credit was to provide an incentive to encourage new industry to locate to this state. The estimated fiscal effect of the corporate income tax credit for new industry could not be determined during the 1969 legislative session. The credit has been used very infrequently since its enactment.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department regarding the number of claimants and amount claimed in relation to the credit and learned the credit was claimed on less than five corporate income tax returns per year in tax years 2006 through 2010, and was not claimed on any tax returns in tax years 2011 through 2014. The inability of a corporation claiming a property or income tax exemption as a new or expanding business to also claim this credit was identified as a potential contributing factor to the lack of use of the credit. Credits similar to the wage and salary credit are found in 13 other states. The committee did not receive comments from parties supporting continuation of the wage and salary credit. The committee considered a bill draft to repeal the wage and salary credit due to the infrequency in which the credit is claimed and the lack of public interest in continuing the credit. The committee received testimony from a representative of the Economic Development Association of North Dakota in support of repealing the wage and salary credit.

Microbusiness Income Tax Credit

Explanation of the Credit

Section 57-38-01.27 provides for a microbusiness income tax credit. The credit is available to all income taxpayers certified by the Director of the Department of Commerce's Division of Economic Development and Finance as a microbusiness. The Department of Commerce is limited to certifying no more than 200 microbusinesses. A business must have fewer than six employees and be located within an economically viable small community to be certified as a microbusiness. An "economically viable small community" is defined as a community with a population of fewer than 2,000, but no less than 100, which has an active community economic development organization, an ongoing relationship with a regional or urban economic development organization, or an existing city sales tax for which at least part of the revenues are dedicated to economic development. A taxpayer may claim as a credit 20 percent of the cost of the taxpayer's new investment and new employment in the microbusiness during the taxable year. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years, but a taxpayer is limited to claiming no more than $10,000 in credits over any combination of taxable years. "New investment" means the amount by which a taxpayer's purchases of microbusiness buildings and depreciable personal property have increased over the amount purchased in the prior year and does not include any merit-based or equity-based salary increases, cost-of-living adjustments, or any other increases in compensation not directly related to the hiring of new employees. "New employment" means the amount by which employee compensation payments to North Dakota residents have increased over the amount paid to North Dakota residents in the prior year.

Perceived Goals in Creating or Altering the Credit

Provisions relating to the microbusiness income tax credit were enacted in 2007. The credit provided for an individual and corporate income tax credit equal to 20 percent of new investment and new employment in a microbusiness, which was defined as a business employing five or fewer employees inside an economically viable small community. The perceived goal of the Legislative Assembly in creating this credit was to provide an incentive to encourage small businesses to locate and expand in smaller communities. The credit was viewed as a tool to help stimulate rural economies. The estimated fiscal effect of the microbusiness income tax credit could not be determined during the 2007 legislative session, but the maximum lifetime impact of the credit was determined to be $2,000,000 as each taxpayer was limited to claiming no more than $10,000 in credits. The Department of Commerce was limited to certifying no more than 200 businesses as qualifying microbusinesses.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department regarding the number of claimants and amount claimed in relation to the credit which indicated the credit was claimed on fewer than five individual income tax returns per year in tax years 2007 through 2014, and was not claimed on any corporate income tax returns in tax years 2007 through 2014. Credits similar to the microbusiness income tax credit are found in 13 other states. The committee did not receive testimony supporting continuation of the microbusiness income tax credit. The committee considered a bill draft to repeal the microbusiness income tax credit due to the infrequency in which the credit is claimed and the lack of public interest in continuing the credit. The committee received testimony from a representative of the Economic Development Association of North Dakota in support of repealing the microbusiness income tax credit.

Soybean or Canola Crushing Facility Construction or Retrofit Income Tax Credit

Explanation of the Credit

Section 57-38-30.6 provides for a soybean or canola crushing facility construction or retrofit credit. The incentive is available to corporate income taxpayers and allows for a credit against state income tax liability in the amount of 10 percent per year for 5 years of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing crushed soybeans or canola. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years, but a taxpayer is limited to claiming no more than $250,000 in credits over any combination of taxable years. Eligible costs incurred by a taxpayer before a facility begins crushing soybeans or canola may not be claimed for purposes of the credit until taxable years on or after crushing begins.

Perceived Goals in Creating or Altering the Credit

Provisions relating to construction or retrofit income tax credits were enacted in 2003. As enacted, Section 57-38-30.6 provided a corporate income tax credit for costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel by volume. The credit was expanded in 2009 to apply to the costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing crushed soybeans or canola. The perceived goal of the Legislative Assembly in creating this credit was to encourage the modification of existing facilities or the construction of new facilities capable of crushing soybeans or canola to process those commodities in North Dakota rather than shipping them out of state for processing. It was noted large amounts of soybeans were being shipped to neighboring states such as Minnesota and South Dakota for crushing and processing. The credit was viewed as a tool to help build a stronger rural economy in North Dakota. The estimated fiscal effect of the soybean or canola crushing facility construction or retrofit credit could not be determined during the 2009 legislative session.

Testimony and Committee Considerations

The soybean or canola crushing facility construction or retrofit credit has never been claimed. Incentives similar to the credit are found in eight other states. The committee considered bill drafts that would have repealed the soybean or canola crushing facility construction or retrofit credit. The committee received testimony from representatives of the North Dakota Soybean Growers Association, EmPower North Dakota Commission, North Dakota Soybean Council, Department of Commerce, and the Economic Development Association of North Dakota in opposition to the bill drafts. Testimony provided in favor of retaining the credit indicated that although the credit has yet to be claimed, it is beneficial to maintain the availability of the incentive for instances in which an opportunity may arise to attract businesses to this state. Testimony indicated a large soybean processing plant that recently announced plans to locate in South Dakota had considered this state as a potential site of operations; however, other factors contributed to the plant's decision to locate in South Dakota. North Dakota exports 90 percent of its soybean crop for processing outside the state. Proponents of the credit contended there is value in allowing the incentive to continue to prevent the state from being passed over for consideration by future processing plants. The committee discussed the potential benefit of increasing the amount of the credit in consideration of the high cost of equipment used in soybean and canola crushing facilities.

Agricultural Commodity Processing Facility Investment Tax Credit

Explanation of the Credit

Section 57-38.6-03 provides for an agricultural commodity processing facility investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for qualified investments made in a qualifying business. A "qualifying business" is defined as an entity organized or incorporated in this state after December 31, 2000, for the primary purpose of being an agricultural commodity processing facility. A qualifying business also must be certified by the Securities Commissioner, be in compliance with North Dakota security laws, and have an agricultural commodity processing facility in this state or intend to locate a facility within this state. An agricultural commodity processing facility consists of a facility that adds value to an agricultural commodity raised in North Dakota or a livestock feeding, handling, milking, or holding operation that uses a byproduct from a biofuels production facility. The credit is equal to 30 percent of the amount of the qualified investment which may consist of direct cash payments, direct cash transfers from a retirement plan, or transfers of a fee simple interest in real property in this state. A qualifying investment must be at risk in the qualifying business for at least 3 years and be in the form of a purchase ownership interest or right to receive payment of dividends from the business. A qualified business must file with the investor, Tax Commissioner, and Director of the Department of Commerce's Division of Economic Development and Finance information identifying each taxpayer making an investment, the amount remitted by the taxpayer, and the date on which the investment was received by the qualifying business. A taxpayer may claim no more than $50,000 in credits per taxable year and no more than $250,000 in credits over any combination of taxable years. Credit amounts exceeding a taxpayer's liability may be carried forward for up to 10 taxable years following the year in which the investment was made.

Perceived Goals in Creating or Altering the Credit

Provisions relating to the agricultural commodity processing facility investment tax credit were enacted in 2001 and provided a credit to individual income taxpayers for investments in a cooperative or limited liability company organized to process and market agricultural commodities, having an agricultural commodity processing facility in this state, and having a majority of its ownership interests owned by producers of unprocessed agricultural commodities. The maximum annual investment for which the credit was allowed was $20,000 and no more than 50 percent of the credit could be claimed in a single taxable year. The credit also could not exceed 50 percent of the taxpayer's income tax liability. Investments were required to remain in a qualifying business for the same period of time, and be expended for the same purposes, as specified in current law. The perceived goal of the Legislative Assembly in creating this credit was to provide an incentive to encourage investment in value-added processing facilities for North Dakota commodities. The credit was described as a tool that would benefit producers, create jobs, and reduce reliance on federal assistance to maintain farm income. Credits related to the production and sale of ethanol in Minnesota and South Dakota were discussed and it was noted the average cost of constructing an ethanol plant was roughly $40 million. The estimated fiscal effect of the agricultural commodity processing facility investment tax credit could not be determined during the 2001 legislative session.

The credit was broadened in 2005 to allow qualifying investments to be made by corporations and passthrough entities, but the credit was limited to investments made in the first 10 qualifying businesses. The maximum annual credit limit allowed per taxpayer also was increased from $20,000 to $50,000 and the lifetime amount of credit per taxpayer was limited to $250,000. The changes were intended to make the credit more functional and more user-friendly. Carryforward provisions related to the credit were revised in 2007 and extended to 10 years.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department and the Department of Commerce detailing the amount claimed for the agricultural commodity processing facility investment tax credit and the number of claimants. Seventeen investors in agricultural commodity processing facilities have earned credits totaling $12,497,869 for investments in 23 companies since 2001. Of the 23 companies that received investments, 12 remain in operation. The total direct, indirect, and induced employment related to the credit amounted to 331 jobs in 2014. The cost of offering the incentive as compared to the increase in state tax revenue resulting from the availability of the incentive equated to a 9.5 percent annual rate of return in 2014. Incentives similar to the agricultural commodity processing facility investment tax credit are found in six other states. The committee also received information pertaining to the differences between the soybean and canola crushing facility equipment credit and the agricultural commodity processing facility investment tax credit. The primary difference between the credits centers around the taxpayer receiving the benefit as a company receives the benefit under the first incentive and a taxpayer investing in a company receives the benefit under the second incentive. The soybean and canola crushing facility equipment credit serves to motivate companies to locate to this state, whereas the agricultural commodity processing facility investment tax credit encourages investment in processing facilities already located in this state. The committee received testimony from representatives of the North Dakota Ethanol Producers Association, the North Dakota Association of Rural Electric Cooperatives, and various other industry representatives in support of retaining the investment tax credit.

Biodiesel Income Tax Credits

Explanation of the Credits

A variety of income tax credits are available to taxpayers for the production or sale of biodiesel fuel. Section 57-38-30.6 provides for a biodiesel fuel production facility construction or retrofit income tax credit in the amount of 10 percent per year for 5 years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel or green diesel fuel by volume. Lifetime credit limits are capped at $250,000 per taxpayer and credits exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

Section 57-38-01.22 provides for an income tax credit for blending biodiesel fuel or green diesel fuel and is available to a taxpayer licensed by the Tax Commissioner as a fuel supplier who blends biodiesel fuel or green diesel fuel in this state. The amount of the credit is equal to five cents per gallon of biodiesel fuel or green diesel fuel of at least a 5 percent blend. Any credit amount exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

Section 57-38-01.23 provides for an income tax credit for adapting a facility to allow for sales of biodiesel or green diesel fuel and is available to a taxpayer licensed by the Tax Commissioner as a fuel retailer. The amount of the credit is equal to 10 percent per year for 5 years of the direct costs incurred by the fuel retailer to adapt or add equipment to a facility to enable the facility to sell diesel fuel containing at least 2 percent biodiesel fuel or green diesel fuel by volume. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years, but a taxpayer is limited to claiming no more than $50,000 in credits over any combination of taxable years.

Perceived Goals in Creating or Altering the Credits

Provisions relating to biodiesel credits were enacted in 2003 and pertained to credits for producing or blending diesel fuel. The perceived goal of the Legislative Assembly in creating the credit was to encourage the development of biodiesel production or blending facilities. It was noted the credit would assist in reducing dependence on foreign energy sources and dependence on farm subsidies because the credit likely would result in increased demand for the state's soybean crops. The credit was viewed as a tool to help stimulate the development of a new industry in North Dakota. The estimated fiscal effect of the corporate income tax credit for biodiesel production and blending equipment costs could not be determined during the 2003 legislative session. The credit was expanded in 2009 to apply to costs incurred to construct or retrofit a facility for the purposes of producing crushed soybeans or canola, and expanded in 2011 to apply to costs incurred to construct or retrofit a facility for the purpose of producing or blending diesel fuel containing at least 2 percent green diesel fuel by volume.

Additional biodiesel credits were added in 2005 to provide for an income tax credit to biodiesel blenders, in the amount of five cents per gallon of biodiesel fuel of at least a 5 percent blend, and a credit to biodiesel retailers equal to 10 percent per year for 5 years of the direct costs incurred by the fuel retailer to adapt or add equipment to enable a facility to sell diesel fuel containing at least 2 percent biodiesel fuel by volume. The perceived goal of the Legislative Assembly in creating these credits was to incentivize development of the renewable fuels industry in North Dakota. Enactment of the credits was viewed as significant step toward biodiesel production in this state. Both credits were expanded in 2011 to apply to the blending or sale of green diesel fuel in addition to biodiesel fuel. Credit provisions were modified in 2013 to clarify that a licensed fuel supplier must blend biodiesel fuel or green diesel fuel in this state to qualify for the credit.

Testimony and Committee Considerations

The committee received information from representatives of the Tax Department indicating income tax credits related to biodiesel have been claimed on only a small number of returns in tax years 2009 through 2014. Incentives similar to the biodiesel income tax credits are found in eight other states. Considering the infrequency in which the credits are claimed, the committee considered bill drafts that would have repealed the biodiesel income tax credits. The committee received testimony from representatives of the North Dakota Soybean Growers Association and the EmPower North Dakota Commission in opposition to the bill drafts. Testimony provided in favor of retaining the credits indicated that although the credit is not frequently claimed, it is beneficial to maintain the availability of the credits for instances in which an opportunity might arise to attract businesses to this state.

Renaissance Zone Credits and Exemptions

Explanation of the Incentives

Chapter 40-63 provides for various renaissance zone tax exemptions and credits. Section 40-63-04 provides income tax exemptions to individuals who purchase or rehabilitate single-family residential property for the individual's primary residence as a zone project. The amount of the exemption is up to $10,000 of personal income tax liability for 5 taxable years beginning with the date rehabilitation is completed or the property is occupied. An exemption also is available for a taxpayer that purchases, leases, rehabilitates, or makes leasehold improvements to residential, public utility infrastructure, or commercial property for any business or investment purposes as a zone project. The amount of the

exemption is equal to the income derived from the business or investment locations within the zone, up to a maximum amount of $500,000 per taxable year for 5 taxable years beginning with the date of purchase, lease, or completion of rehabilitation. For projects that take the form of an expansion of an existing building in the zone, the amount of the exemption is equal to the income derived from the business, or from the investment use of the building, during the taxable year times a ratio equal to the square footage added by the expansion divided by the total square footage of the building after expansion. In lieu of the previous exemption, a taxpayer may elect to exempt up to $2,000 of individual income tax liability if the cost of a new business purchase, leasehold improvement, or existing business expansion exceeds $75,000 and the business is in a city with a population of 2,500 or less.

A property owner that is not participating in a renaissance zone project may be entitled to a tax incentive in the form of a credit against income tax liability if the owner is required to make changes in utility services or in a building structure due to changes made to property that is part of a zone project. The amount of the credit is equal to the total amount of the investment necessary to complete the changes and must be claimed in the taxable year in which the changes were completed. Any earned credit amount exceeding a taxpayer's liability may be carried forward for up to 5 taxable years. A renaissance zone credit also is offered in Section 40-63-06 for investments in historic preservation or property renovation within a renaissance zone. The amount of the credit is equal to 25 percent of the amount invested, up to a maximum amount of $250,000. The credit must be claimed in the year the preservation or renovation work is completed and any earned credit amount exceeding a taxpayer's liability may be carried forward for up to 5 taxable years.

Exemptions are available under Section 40-63-07 for renaissance fund organizations. A city with a designated renaissance zone may establish a renaissance fund organization to raise funds to finance zone projects. A taxpayer may receive a credit against income tax liability in the amount of 50 percent of the amount invested in a renaissance fund organization. The maximum amount of investment credits awarded to all taxpayers is limited to $10.5 million and any credit amount exceeding a taxpayer's liability may be carried forward for up to 5 taxable years.

Perceived Goals in Creating or Altering the Incentives

Provisions relating to renaissance zones were enacted in 1999 to allow a governing body of a city to apply to designate a portion of the city as a renaissance zone. Income and property tax exemptions were created for taxpayers investing in real property within a renaissance zone. A historic preservation and renovation tax credit also was created for investment within a renaissance zone. The perceived goal of the Legislative Assembly in creating renaissance zone credits and exemptions was to provide incentives to encourage the rejuvenation of inner cities. The estimated fiscal effect of renaissance zone credits and exemptions could not be determined during the 1999 legislative session. Various changes were made to renaissance zone provisions in later years, including granting the ability to expand the boundaries of an existing renaissance zone or remove portions of a renaissance zone that were not progressing in 2001, authorizing a renaissance fund organization to provide financing to businesses outside a renaissance zone in 2003, authorizing the Department of Commerce to approve a city's request to extend the duration of a renaissance zone in 2009, modifying provisions related to investments in renaissance zone organizations in 2011, changing the manner in which income related to a business expansion is attributed in 2013, and increasing the maximum allowable size of renaissance zones in 2015.

Renaissance Zone Reports

The committee was assigned the responsibility to receive an annual report from the Department of Commerce, Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2), and a report compiling reports from cities that have renaissance zone property included in a tax increment financing district, pursuant to Section 40-63-03(10). According to the report on renaissance zone progress, 1,533 projects have been approved and 1,175 projects have been completed since the inception of the renaissance zone program. There were 58 renaissance zones in the state in 2015. A survey of renaissance zone communities conducted in 2015 indicated renaissance zones created 11 new businesses, 15 business expansions, and 122 new jobs. The benefits realized by the 59 projects that reached completion in 2015 amounted to over $2,800,000 in property tax exemptions; $250,000 in historic property preservation or renovation income tax credits; and over $1,100,000 in single-family, business, and investor income tax credits and exemptions. Information contained in the second report indicated the cities of Bismarck, Hazen, and Mandan have properties located in both a renaissance zone and a tax increment financing district. Mandan is the only city with properties receiving benefits from both the renaissance zone program and tax increment financing program.

Testimony and Committee Considerations

The committee reviewed background memorandums, multistate surveys, and claimant data pertaining to renaissance zone credits and exemptions and received information from a representative of the Department of Commerce regarding the ability to extend the duration of a renaissance zone without receiving support from political subdivisions impacted by the renaissance zone. As the committee did not have adequate time to receive testimony from interested parties or gather further data pertaining to renaissance zones, committee members agreed renaissance zone incentives would need to be reviewed further by a future interim committee.

Additional Credits and Exemptions

The committee reviewed background memorandums, multistate surveys, and claimant data pertaining to the research expense credit; internship program credit; workforce recruitment credit; new jobs credit from income tax withholding; new or expanding business exemption; and the geothermal, solar, wind, and biomass energy device tax credit, but did not have adequate time to receive testimony from interested parties and additional data required to fully assess the effectiveness of the tax incentives. Committee members agreed the incentives would need to be carried forward for review by a future interim committee.

Economic Analysis Tools for Evaluating Incentives

The committee reviewed information regarding various economic analysis tools used in evaluating the effectiveness of incentives. The committee reviewed information pertaining to the Regional Input-Output Modeling System, the Impact Planning and Analysis (IMPLAN) software package, and software developed by Regional Economic Models, Inc. (REMI). The committee received testimony from representatives of the Department of Commerce regarding the department's use of REMI software and received a demonstration of the capabilities of REMI's Tax-PI software from the company's representatives. The Regional Economic Models, Inc. software is capable of evaluating the economic and fiscal effects of a program or policy over an extended duration and allows for customized state government expenditure models and customizable tables to reflect actual or projected revenues. The committee also reviewed information pertaining to the prevalence of staff economists in other states and discussed the potential value of having a state economist.

Committee members expressed interest in acquiring REMI software as a tool to assist the committee in conducting a cost-benefit analysis of the incentives selected for review. The committee considered the amount of funds needed to acquire the software in relation to the millions in foregone revenue resulting from the availability of tax incentives. The committee discussed potential barriers to effectively using the software including the limited amount of data available for certain incentives. The committee received information pertaining to the disclosure of confidential tax information and received a summary from representatives of the Department of Commerce and the Tax Department regarding the information each agency obtains in relation to the incentives selected for study and, of that information, the data each agency may publically disclose. The committee also discussed a potential future source of publically available information in relation to new developments pertaining to the financial reporting requirements set to be imposed on political subdivisions under Government Accounting Standards Board Statement 77.

The committee reviewed information from various states that use REMI and considered a bill draft modeled after a Texas law which would have directed the preparation of dynamic fiscal impact statements for any legislative measure with a positive or negative fiscal impact over an amount specified by the Legislative Assembly. The bill draft would have required an analysis be conducted 5 years after the enactment of the legislative measure to gauge the accuracy of the dynamic fiscal impact statement prepared at the time the legislative measure was introduced. The committee also considered a bill draft to allow the Legislative Council to acquire dynamic fiscal impact analysis software, upon the directive of the Legislative Management, for use during the 2017-18 interim in evaluating of economic development tax incentives. The committee received information from representatives of REMI regarding the cost of acquiring REMI's Tax-PI software. The committee received a quote of $136,000 to purchase the software for a period of 1 year, with an additional update and maintenance fee of $28,500 for each year thereafter. The committee also received a quote of $54,700 for a 6-month rental of the software, as well as various pricing options pertaining to available consulting services. The committee did not factor the cost of any additional staff resources into the $165,000 appropriation provided in the bill draft.

Recommendations

The committee recommends House Bill No. 1044 to provide a uniform definition of "primary sector business."

The committee recommends House Bill No. 1045 to sunset the availability of the angel fund investment tax credit for investments made after December 31, 2017, and increase allowable credit amounts and carryforward periods related to the seed capital investment tax credit.

The committee recommends House Bill No. 1046 to eliminate the sunset date attached to the telecommunications infrastructure sales tax exemption.

The committee recommends House Bill No. 1047 to eliminate the sunset date attached to the manufacturing automation equipment income tax credit.

The committee recommends House Bill No. 1048 to repeal the certified nonprofit development corporation income tax credit.

The committee recommends House Bill No. 1049 to repeal the wage and salary income tax credit.

The committee recommends House Bill No. 1050 to repeal the microbusiness income tax credit.

The committee recommends Senate Bill No. 2044 relating to the acquisition of software necessary to prepare dynamic fiscal impact statements for economic development tax incentives selected for review during the 2017-18 interim.

SOCIAL SERVICES FINANCING STUDY

Section 12 of Senate Bill No. 2206 provided for a Legislative Management study of transferring the costs of operating social services programs from county property tax levies to general fund appropriations. The development of a proposed transition plan must include a timeline for the major milestones of the transition plan, considerations for the transition, estimated costs, a plan to require a property tax reduction for the amount of the budgeted savings brought about by the transfer of county social services costs to the state, a plan resulting in the elimination of the county social services levy under Section 50-06.2-05, and potential legislation to implement recommended changes. The study also must include consideration of the feasibility of implementing the proposed transition plan.

Background

A county's ability to levy tax for comprehensive human service programs arose in 1989 with the passage of House Bill No. 1521. The bill granted the board of county commissioners the authority to levy an annual tax, not to exceed 20 mills, "for poor relief purposes." Prior to the passage of the bill, the costs of human service programs were funded primarily by state and federal sources.

As the realm of social services programs expanded and populations shifted, funding formulas developed in the early 1980s for certain economic assistance programs began to lose relevance. Consideration of the responsibilities of county social services agencies, regional human service centers, and the Department of Human Services became a topic for review, as was evidenced by the passage of 1995 House Concurrent Resolution No. 3045 directing a study of the responsibilities of these agencies. The 1995-96 interim Budget Committee on Human Services was selected to conduct the study, and as a result, recommended 1997 House Bill No. 1041 to the Legislative Management for introduction during the 1997 legislative session. House Bill No. 1041, as passed by the 1997 Legislative Assembly, required counties to assume the financial responsibility for the costs of administering the following economic assistance programs:

1. Aid to families with dependent children.
2. Job opportunities and basic skills program.
3. Child care block grant.
4. Title IV-A at-risk child care.
5. Food stamps.
6. Medical assistance.
7. Low-income home energy assistance program.
8. Refugee assistance.
9. Basic care.

In return, the state assumed complete financial responsibility for grant programs, including temporary assistance to needy families, basic care, child care assistance, and medical assistance. The state also was required to provide additional support for administrative costs of counties with Indian land. The bill's provisions were described as the "swap" agreement and resulted from joint discussions among the Department of Human Services, the North Dakota Association of Counties, and the North Dakota Association of County Social Service Board Directors regarding alternative methods for the delivery and funding of the administrative costs of economic assistance programs.

The effects of the 1997 "swap" legislation were later reviewed by the 2003-04 interim Budget Committee on Human Services pursuant to the study provided in Section 14 of 2003 Senate Bill No. 2012, directing the study of administrative costs of human services programs, including costs incurred by the central office of the Department of Human Services, human service centers, and county social services. The success and effects of the 1997 "swap" legislation also were studied by the 2007-08 interim Human Services Committee. Testimony provided to that committee indicated since the "swap" agreement, the reimbursement process and budgeting process had become easier for counties. Counties had better control over staffing issues and were able to better manage tax revenue requirements. The agreement had resulted in efficiencies to counties for administering economic assistance programs.

Legislation passed in 2009 provided for another study addressing the funding responsibilities for certain social services programs. House Bill No. 1425 (2009) directed the study of the feasibility and desirability of transferring from the county to the state the responsibility for the funding of nonfederal foster care and subsidized adoption costs.

Following the 2009 study, legislation was introduced during the 2011 legislative session which contained substantive provisions to provide for state assumption of county foster care and subsidized adoption costs that were funded at the county level. The restructuring proposed in 2011 House Bill No. 1333 was unsuccessful, as was a proposed study in 2011 Senate Bill No. 2240 for the development of a plan to restructure the human service delivery system.

The concepts provided in House Bill No. 1333 were reiterated in 2013 in House Bill No. 1233, yet legislators raised concerns regarding accountability for passing along savings derived from state tax relief to property taxpayers and that bill failed to pass.

2015 Legislation

Discussion of restructuring social services funding responsibilities resumed in 2014 as the Governor's Property Tax Task Force began the task of reviewing the multitude of tax levies available to political subdivisions for potential areas of consolidation or simplification. As the task force reviewed levies, it was determined four levies potentially could be repealed through state assumption of county social services costs. After receiving testimony from individuals involved in the administration of state and county social services, the task force determined the complex task of restructuring funding responsibilities for social services programs exceeded the scope of the consolidation and simplification efforts undertaken in 2015 Senate Bill No. 2144. The provisions for restructuring funding responsibilities for social services programs were ultimately placed in Senate Bill No. 2206.

Senate Bill No. 2206 provided for the assumption of certain county social services costs by the Department of Human Services. The bill provided for a phased transition of county social services funding from the county level to the state level. The first phase of the transition takes place during the 2015-17 biennium and is anticipated to result in over $23 million in property tax savings. County property tax savings for the 2017-19 biennium are estimated at just over $31 million.

In the first phase of the transition, each county social service board is required to submit its 2016 budget using the budget submitted in 2014 as a starting point. County social service boards would then subtract the reduction in the county's social services funding responsibility for 2014, which is derived from transferring county social service costs from county social service boards to the Department of Human Services. County social service boards would then apply the percentage salary and benefits increase provided by legislative appropriation for state employees for 2015 to the resulting amount. For 2017, a county's social service budget may not exceed an amount determined using the 2015 budget as a starting point and applying to that amount the percentage salary and benefits increase provided by legislative appropriations for state employees for 2016.

The cost savings realized by the counties are derived from the state assumption of certain social services costs, including the county portion of foster care and subsidized adoption assistance payments, medical assistance payments for therapeutic foster care services, service payments for the elderly and disabled, county administrative costs for providing family preservation services, computer processing costs for the technical eligibility system, and the costs of electronic benefit transfers for the supplemental nutrition assistance program.

Senate Bill No. 2206 required the remaining county share of the human service budget to be funded entirely from the county's property tax levy for that purpose. The bill did not allow the county to use funds from any other source to supplement the human services budget with the exception of a county's use of an identifiable amount of other sources the county has used to supplement its human services budget for 2015, and any funds received from the human services grant program.

Senate Bill No. 2206 also required the Department of Human Services to develop a process to review requests from a county social service board if increased staff is needed to address substantially increased caseloads. Consideration must be given to the potential for multicounty sharing of staff when reviewing caseload information. A human services grant program was established by the bill for counties adjacent to or included as part of an Indian reservation or a state hospital, which has utilized the emergency human services mill levy provided in Chapter 50-03 to cover human service costs in the past.

The second phase of transitioning payment of county social service costs from county property tax levies to general fund appropriations lies in the development of a funding formula to adequately reimburse counties for the costs of administering social services. The provisions provided in Section 12 of Senate Bill No. 2206 direct the study of the feasibility of transferring the costs of operating social services programs from county property tax levies to general fund appropriations. The study provided for the optional formation of a County Social Services Finance Working Group consisting of:

1. The Director of the Department of Human Services or the Director's designee;
2. The Chief Financial Officer of the Department of Human Services;
3. Two members representing elected county officials identified in Section 11-10-02 as selected by the North Dakota Association of Counties;
4. The Tax Commissioner or the Tax Commissioner's designee;
5. The Director of the Office of Management and Budget or the Director's designee;
6. Two county social services directors selected by the North Dakota County Social Services Director's Association; and
7. One member representing the North Dakota Association of Counties.

The working group was to report its progress and findings to the interim committee tasked with conducting the study during the 2015-16 interim.

Testimony and Committee Considerations

Purpose of Transitioning County Funding Responsibility to State Sources

The committee received information from the Governor regarding the history behind the concept of transitioning the remaining county funding responsibility for social services to the state level. The motivation for transitioning the costs of social services for payment at the state level centers around the opportunity to provide significant and permanent property tax relief.

The testimony from a representative of the North Dakota Association of Counties highlighted county support for the concept of replacing county property tax levies with state-funded sources for the payment of county social service costs. The testimony contended property taxes are a poor funding source for the costs of administering federal- and state-directed social service programs because counties have little control over program eligibility requirements that are often dictated at the federal level. In addition, federal economic assistance programs bear no relationship to property tax values as do other services such as fire protection and road maintenance. The testimony indicated counties with the lowest property values often have proportionally higher costs related to the delivery of social services due to increased needs in poorer counties. County representatives expressed support for the replacement of county-funded revenue sources with state revenues if access to local services is not eroded.

The committee received an update on the human services grant program, created by Senate Bill No. 2206 as a result of the elimination of emergency human services levy 1222. The Department of Human Services drafted emergency rules pertaining to the operation of the grant program and eight counties had been awarded a total of $1.7 million of the available $1.9 million in grant funding for calendar year 2017. The grant program allows for $2 million in emergency funds to be awarded during calendar year 2018.

County Social Services Finance Working Group

The optional working group provided for in Senate Bill No. 2206 held its first meeting in June 2015. The committee received periodic updates from representatives of the County Social Services Finance Working Group throughout the course of the interim. The working group collected data pertaining to county budgets for calendar years 2015 and 2016, and information pertaining to counties' actual expenditures for calendar year 2015 as a means of establishing a starting point for the development of a reimbursement formula. Cost information collected by the working group encompassed all county social service expenditures in calendar year 2015, including expenditures for employee salaries and payroll benefits and expenditures for facility costs such as light, rent, and heat. Cost information related to programs entirely county-funded and countywide indirect cost information was collected for calendar years 2014 and 2015. Representatives of the working group provided information regarding the difference between program costs and administrative costs and information regarding the portion of administrative costs funded with federal funds. The committee received information pertaining to the reasons per capita costs of social services differ between counties. Per capital costs are higher in counties with a large concentration of clientele in rural areas due to higher transportation costs and in counties that must offer higher pay to attract applicants for skilled positions. The largest increases in county costs are attributable to salary increases and costlier insurance plans for employees.

The County Social Services Finance Working Group collected information related to county caseloads and divided caseload counts and the costs associated with caseloads into two groups. Economic assistance caseloads pertain to eligibility determinations for temporary assistance to needy families, child care assistance, the supplemental nutrition assistance program, medical eligible services, the low-income heating assistance program, and foster care. Social service caseloads pertain to case management services in the areas of foster care case management, foster care home licensing, subsidized adoptions, child abuse and neglect, family preservation, and child care licensing. The working group determined one case-month is equal to the provision of economic assistance or social services to one individual

for the period of 1 month or the provision of energy assistance to one household for the period beginning October 1 of each year and ending May 31 of the following year. The committee received data reflecting the work effort related to each type of economic assistance and social service case statewide over the past 4 years. The committee was informed counties have little ability to influence the number of individuals who qualify for services.

Structure and Delivery of Social Services

The committee received information from a representative of the Department of Human Services regarding the organizational structure of the department. The committee learned the department consists of a medical services section, a behavioral health section, an administration and support section, and a program and policy section. The program and policy section is responsible for drafting administrative rules, administering federal funding, and setting policies for various programs. The medical services section and the economic assistance policy division within the program and policy section are highly involved with counties because many economic assistance programs are state supervised and county administered. The state provides the policies behind the administration of economic assistance programs and counties determine the eligibility of individuals applying for services within a county in accordance with state and federal policies.

The Department of Human Services operates eight regional human service centers with each center serving a designated multicounty area and providing an array of community-based services. The committee received information regarding the privatization of social services in various states and the department's partnership with private service providers. The committee received a description of how an individual or entity can become a qualified service provider and the types of services offered by qualified service providers. Committee members voiced concerns regarding difficulties often encountered in accessing private service providers in rural areas.

Each board of county commissioners is responsible for appointing and overseeing a county social service board, which supervises and directs all human service activities conducted by the county. There are 47 county social service boards in the state, some of which include combined boards. The county commission has budgetary control over county social services and determines the level of funding available from property taxes. Some counties share social service staff through the use of joint powers agreements or other contracting arrangements.

The committee received information from a representative of Traill County Social Services regarding the manner in which counties are sharing services and a county-by-county listing of county-funded services. The committee also received information from the Director of Dakota Central Social Services regarding the history behind the consolidation of McLean, Mercer, Oliver, and Sheridan Counties into the Dakota Central Social Services district.

The committee was informed consolidations with counties containing a large amount of reservation land are unlikely to occur because a large amount of the property in those counties is untaxed. Under the current property tax funding mechanism, consolidations likely would be avoided due to the resulting property tax shift to the county containing a greater amount of taxable property. It was argued funding social services using state revenue sources may create a new dynamic in counties electing to consolidate or share services. The committee discussed options for incentivizing counties to consolidate under a state-funded reimbursement formula. Committee members noted consolidations could be incentivized in the same manner school district consolidations were incentivized under the K-12 funding formula.

Representatives from various counties and the Department of Human Services noted they did not believe this study contemplated the migration of county staff to the state level or any substantial restructuring of the administration or delivery of social services. Although committee members expressed interest in discussing the potential for transferring county employees to the state level and finding efficiencies in the delivery of social services, the committee determined the main focus of the study was transferring funding responsibility for social services, not restructuring the delivery of social services.

County Budgets and Ending Fund Balances

The committee received information from a representative of the North Dakota Association of Counties regarding the number of mills levied for social services in each of the 53 counties and the amount of each county's ending fund balance. The total ending fund balance for calendar year 2015 for all counties was $26 million, or 28 percent, of the total amount of funds budgeted for all counties in calendar year 2015. The amount of carryforward reserves varied greatly from county to county.

The committee reviewed data pertaining to the savings to property taxpayers resulting from the state assumption of grant costs pursuant to Senate Bill No. 2206, which indicated $13 million in property tax savings to taxpayers, or an average levy reduction of 2.51 mills. Although some committee members expressed discomfort with the amount of funds being carried forward from previous budget years, other committee members noted high carryforward balances might be attributable to a county losing staff mid-year and being unable to find a replacement to fill the vacant position.

The committee received testimony from county representatives regarding the amount of carryforward funds counties would prefer to retain if the state assumed the remaining county social service costs associated with staffing and administration. Preferences were expressed for the ability to retain an amount defined in terms of dollars and in terms of a percentage of a county's prior year budget. County representatives noted a carryforward limit of $100,000, or 35 percent of the county's prior year budget, whichever is greater, would be an adequate amount of funds to allow counties to address any unforeseen circumstances that might arise.

The committee discussed treatment of funds that exceed carryforward limits and expressed a preference for returning any excess funds originally derived from property tax revenue to property taxpayers. The committee reached a consensus that the most effective way to return funds would be through future mill levy reductions in an amount equivalent to the amount of funds exceeding the carryforward limits. Committee members agreed amounts exceeding carryforward limits originally derived from state funds should be deducted from a county's future formula distributions.

Funding Formula Costs and Property Tax Relief

The committee discussed funding sources for the replacement of county-funded social service costs. The committee considered the $300 million earmarked for property tax relief and received an illustration of how the 12 percent state-paid property tax relief credit would compare to property tax relief resulting from the elimination of social service mill levies. The amount of tax relief individual property owners would realize as a result of the state funding social service costs would vary based on the amount of each county's prior social service levy. As a means of eliminating inequities in the amount of property tax relief realized from one county to another, the committee discussed the provision of a hold-harmless payment to ensure counties receive no less funding than the amount of property tax relief received by all taxing districts in each county in calendar year 2017 as a result of the 12 percent state-paid property tax relief credit.

The committee discussed the method in which property tax relief would be distributed to taxpayers in the form of a hold-harmless payment, including requiring counties to reduce future year county general fund levies in an amount equivalent to the amount a county's 2017, 12 percent state-paid property tax relief credit exceeds the amount a county receives under the funding formula. Committee members were supportive of incorporating mechanisms in the funding formula to ensure property tax relief is passed through to taxpayers.

Information provided to the committee indicated the estimated cost of providing state funding for county social service costs would be $258.7 million for the 2017-19 biennium. An estimated $5 million to $10 million in additional costs also could be added to that amount depending on the rate of case-growth in counties. A representative of the North Dakota Association of Counties noted county auditors likely would be in favor of replacing the 12 percent state-paid property tax relief credit with a county general fund mill levy reduction because the 12 percent state-paid property tax relief credit is challenging to administer.

Working Group Recommendations

The committee received the County Social Services Finance Working Group recommendations regarding the development of a funding formula and a transition plan for transferring the costs of operating social service programs from county property tax levies to the state funding sources. The transition plan would eliminate county social service levy authority beginning in tax year 2017. The first year of state-funded formula payments would begin in January 2018. Calendar year 2015 data pertaining to county expenditures and case-months would be used for the base year. A county's 2015 base-year expenditures would be inflated by 5 percent for calendar year 2016 and an additional 5 percent for calendar year 2017 to arrive at equivalent 2017 adjusted base year expenditures. The inflated 2017 adjusted base year expenditures in counties with the highest base year case-months for social service cases and economic assistance cases would be divided by 2015 case-months for each county to determine the per-case base rate for economic assistance cases and social service cases. Per-case base rates would be inflated by 5 percent for calendar year 2018 formula payments and an additional 5 percent for calendar year 2019 formula payments. The per-case base rates would be multiplied by a weighting factor for counties with smaller case-month totals in recognition of the efficiencies that are generally seen in counties with higher case-month totals.

Formula payments for calendar year 2018 would be calculated in June of the prior year and would be based on a county's recorded economic assistance and social service case-month data for calendar year 2016. The first half of a county's calendar year formula payment would be distributed on or before January 10 of each year. A county's current year formula payment would be recalculated in June of each year using case-month data that is 1 year more current than the data used to calculate the original formula payment. A county's formula payment for the calendar year would be adjusted only if the recalculated payment amount exceeded the original payment amount by more than 5 percent. For calendar year 2018, a county would be protected against receiving less than 102 percent of the amount the county received using a county's adjusted 2017 base year expenditures and be restricted from receiving more than 110 percent of a county's adjusted 2017 base year expenditures unless the county experienced growth in either economic assistance case-months or social service case-months that exceeded the county's case-month totals for either case type in the previous year by more than 5 percent. The second half of a county's calendar year formula payment would be distributed

on or before June 15 of each year. A county's hold-harmless payment resulting from the elimination of the 12 percent state-paid property tax credit would be distributed to a county on or before January 31 of each year.

The formula also would provide incentives for counties that consolidated into combined service areas. A county would be limited to carrying forward no more than $100,000, or 35 percent, of its prior year budget amount, whichever is greater. Any funds exceeding carryforward limits would be credited to property taxpayers through future year county general fund levy reductions for funds exceeding carryforward limits at the end of 2017. Funds exceeding carryforward limits at the end of 2018 would be accounted for through reductions to a county's future formula payments.

The committee considered a bill draft that would have implemented the County Social Services Finance Working Group recommendations. Committee members generally agreed the working group made tremendous progress in the development of a transition plan that addressed county concerns regarding adequate social service funding and legislative concerns regarding limits on county spending and assurances that property tax relief would be passed through to taxpayers. Committee members acknowledged the funding formula likely would be subject to additional adjustments if introduced during the 2017 legislative session.

Committee members expressed interest in incorporating in the bill draft a requirement that property tax statements reflect the amount of property tax savings realized by the elimination of county social service mill levies and mill levy reductions resulting from the 12 percent state-paid property tax relief credit hold-harmless payment. Committee members also expressed support for adding provisions to account for the impact on rural electric cooperatives as a result of eliminating the 12 percent state-paid property tax credit. Although committee members debated whether the bill draft would have a better chance of success if recommended as an interim committee bill or introduced as privately sponsored legislation, the committee agreed that regardless of the method of introduction the concepts in the bill draft would require support from committee members throughout the 2017 legislative session.

The committee reviewed proposed additions to the bill draft to include studies pertaining to restructuring the ownership of the Life Skills and Transition Center in Grafton, transferring of ownership of the State Hospital to the Department of Corrections and Rehabilitation, and restructuring the eight human service centers. Committee members expressed support for the concepts contained in the proposed studies and agreed additional consideration should be given to how the quality of social services may be improved and how programs may run more efficiently.

Conclusion

The committee makes no recommendation with respect to its study of transferring the costs of operating social services programs from county property tax levies to general fund appropriations.

CONTRACTOR SALES AND USE TAX STUDY

Section 1 of House Bill No. 1401 directs the Legislative Management to study the application of sales and use taxes to purchases made by a contractor on behalf of an exempt entity. As introduced, the bill would have created a sales and use tax exemption for materials, supplies, or equipment acquired by a contractor, subcontractor, or builder on behalf of an exempt entity. The bill would have required the purchaser to obtain a purchasing agent authorization letter and an exemption certificate or number from the exempt entity and would have required that any items exempt from sales or use tax be installed or completely consumed in the performance of the contract. The fiscal note for the bill, as introduced, indicated a combined reduction in general fund and state aid distribution fund revenues of an estimated $56 million for the 2015-17 biennium. The bill was amended in the House to remove the substantive provisions and to provide for this study.

Background

The application of sales and use tax is governed by Chapters 57-39.2 and 57-40.2. Sales tax is imposed at a rate of 5 percent on the gross receipts from taxable retail sales of tangible personal property and services. The tax is paid by the purchaser and collected and remitted by the retailer. Use tax, which is also imposed at a rate of 5 percent, is applied to tangible personal property purchased at retail for storage, use, or consumption in this state, or tangible personal property purchased outside this state but later brought into this state. Use tax is applied to the purchase price of an item at the time of purchase, or to the fair market value of the item at the time it is brought into this state.

Pursuant to Sections 57-39.2-04 and 57-40.2-04, a wide range of products, services, and activities are exempt from the imposition of sales and use tax. Exempt products range from small items, such as the ink used to print newspapers, to larger items, such as durable medical equipment. In addition to the exemptions available for individual items, various groups and entities are also exempt from paying sales and use tax on some, or all, of their purchases. Groups and entities exempt from payment of sales and use tax on purchases include:

- Private nonprofit schools, on purchases of textbooks, yearbooks, and school supplies, pursuant to Section 57-39.2-04(5);

- Public schools, on all purchases made using a school district check or warrant, pursuant to Section 57-39.2-04(6);
- The federal government, including federal corporations, on all purchases made by the United States government or its agencies, departments, or instrumentalities, pursuant to Section 57-39.2-04(1);
- State and local governments, on all purchases made by any state or any state's subdivisions, departments, agencies, or institutions so long as a political subdivision of the other state would treat a sale to a North Dakota political subdivision as an exempt sale in that state, pursuant to Section 57-39.2-04(6);
- Indian tribes, on all purchases made by a tribal government agency, instrumentality, or political subdivision that performs essential government functions, pursuant to Section 57-39.2-04(6);
- Hospitals, skilled nursing facilities, intermediate care facilities, basic care facilities and emergency medical services providers licensed by the State Department of Health, and assisted living facilities licensed by the Department of Human Services, on all purchases made for the use or benefit of the provider's patients or occupants, pursuant to Section 57-39.2-04(24);
- Nonprofit voluntary health associations and nonprofit medical research institutes, exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)], on all purchases, pursuant to Sections 57-39.2-04(32) and 57-39.2-04(43);
- Commerce authorities, on purchases integrated into the infrastructure of a commerce authority to directly serve the commerce authority's infrastructure needs, pursuant to Section 57-39.2-04(48);
- Special fuel businesses, on purchases of equipment to enable a facility to sell diesel fuel containing at least 2 percent biodiesel or green diesel fuel, pursuant to Section 57-39.2-04(51); and
- Montana residents and businesses, on all purchases exceeding $50 for use outside of this state, pursuant to Section 57-39.2-04(12).

Payment of Sales and Use Tax by Contractors

A contractor or subcontractor is deemed to be the final user or consumer of any tangible personal property used in the performance of a contract with another party. As the final user, a contractor is required to remit sales or use tax on any tangible personal property used in the performance of a contract, subject to limited exemptions. The amount of tax due will be determined by applying the applicable tax rate to either the purchase price of the property, or to the fair market value of the property, whichever is greater. A contractor may take various approaches in remitting the required amount of sales or use tax.

A contractor may remit sales tax on all purchases of tangible personal property at the time of purchase or a contractor may present a certificate of resale or a contractor's certificate to avoid payment of sales tax at the time of purchase. If a contractor presents a contractor's certificate and elects not to pay sales tax at the time of purchase, the contractor will be required to remit use tax on those items in the reporting period in which the purchases were made. If a contractor presents a certificate of resale and elects not to pay sales tax at the time of purchase, the contractor will be required to remit use tax on those items once they are used in the performance of a contract. In both instances, the contractor may build in the cost of the tax paid into the contract, but may not explicitly designate the charge as relating to sales tax on the customer's invoice as the contractor is always deemed to be the final user of tangible personal property and the party ultimately responsible for remitting sales or use tax on those items.

A contractor's responsibility to remit sales or use tax on items used in the performance of a contract is not extinguished by the fact that some of the items may have been purchased by an entity that is exempt from paying sales and use tax. A contractor must remit use tax on any items used in the performance of a contract on which sales or use tax was not remitted by a previous purchaser, subject to limited exceptions. Items that may be purchased by an individual or entity without the payment of sales or use tax and later installed by a contractor without payment of use tax include medical equipment purchased by a long-term care facility and later installed into the hospital or facility making the exempt purchase; production equipment and other tangible personal property used for repowering, environmental upgrades, or power plant construction; machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility; tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility; tangible personal property used to construct or expand a qualifying oil refinery; tangible personal property used to construct or expand a processing facility to produce liquefied natural gas; tangible personal property used to construct or expand a facility for coal gasification byproducts; tangible personal property used to construct or expand telecommunications service infrastructure that is capable of providing telecommunication service; materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas; and tangible personal property used to construct a qualifying fertilizer or chemical processing facility.

If any of these items are purchased or installed on behalf of an exempt entity or individual by a contractor who remits sales or use tax on the items, the individual or entity qualifying for the exemption may apply to the Tax Commissioner for a refund of the difference between the amount of tax paid and the exemption imposed or allowed.

Recent Sales and Use Tax Legislation Pertaining to Contractors

The provisions of House Bill No. 1401, as introduced, were not the first to be considered by the Legislative Assembly in modifying the application of sales and use tax for purchases made by contractors on behalf of an exempt entity. Since 2007, three similar bills have been introduced for consideration by the Legislative Assembly, all of which were defeated.

Senate Bill No. 2253 (2007) would have allowed an individual or organization to apply for a refund of the amount of sales or use tax paid by a contractor for tangible personal property delivered or installed by a contractor for that individual or organization if sales or use tax would not have applied had the individual or organization purchased or installed those items directly. Testimony provided during the committee hearings on the bill indicated the bill originally arose due to concerns expressed by a medical center. The example provided during testimony on the bill illustrated a scenario in which a large medical center that could afford to have maintenance staff on its payroll could purchase a piece of equipment and have it installed by the facility's maintenance staff without incurring any sales or use tax liability. This scenario was contrasted with a situation in which a smaller medical center would make the same purchase, but hire a contractor to install the item as the facility did not employ its own maintenance staff. The contractor hired by the smaller facility would be required to pay use tax when installing the item purchased by the medical center as sales tax was not remitted at the time the item was purchased. The contractor in this situation presumably would pass the cost of remitting use tax on that item to the facility in which the contractor executed the installation contract. During discussion of the bill, testimony indicated the language provided in the bill may have broader application reaching beyond just medical centers. The fiscal note for the bill indicated an anticipated reduction in general fund and state aid distribution fund revenues of $15.4 million for the 2007-09 biennium.

Following the defeat of Senate Bill No. 2253, 2009 Senate Bill No. 2186 and 2011 Senate Bill No. 2159 were introduced to allow a sales and use tax exemption for purchases made by a contractor on behalf of an exempt entity. The provisions in these bills prompted similar discussion regarding scope of application and potential revenue impacts as the provisions contained in 2007 Senate Bill No. 2253. When similar discussion arose in 2015, the House Finance and Taxation Committee voted to amend the bill into a study.

Testimony and Committee Considerations

The committee received testimony from a representative of the Tax Department indicating a contractor that holds a sales tax permit and is registered with the Secretary of State may use an exemption certificate to buy materials without the payment of sales tax. This practice results in more of a tax deferral than a true exemption because a contractor must remit use tax on the materials purchased with an exemption certificate once the materials are used in a construction project. Contractors also must remit use tax on items purchased without the payment of sales or use tax by an exempt entity but later used by the contractor in the completion of a construction or installation contract with the exempt entity.

The committee discussed the option of providing refunds to contractors for the amount of sales and use tax paid. A refund option can be somewhat burdensome for contractors as a contractor would be required to remit all purchasing invoices related to the project and finance any sales and use tax charges until the refund was issued. Construction of a $500 million hospital in Fargo was used to illustrate the difficulties of employing a refund option for larger projects.

Concerns also were raised that requiring contractors to separate costs for labor and materials might be problematic for contractors as contractors typically submit bids in the form of a lump sum. A representative of the North Dakota Township Officers Association expressed a preference for a bill draft that would allow a sales and use tax exemption to be provided up front rather than requiring a contractor to apply for a refund.

The committee considered a bill draft which would have exempted contractors from the requirement to remit use tax on materials used in the performance of a contract with an exempt entity. The committee also considered a bill draft which would have eliminated the requirement for a contractor to remit sales or use tax items purchased by or for an exempt entity and installed by a contractor. The contractor would have been required to obtain a purchasing agent authorization letter and a copy of the exempt entity's exemption certificate prior to purchasing items, or withdrawing items from the contractor's inventory, to be used in completion of a contract with an exempt entity. The bill draft also would have required the tangible personal property be incorporated as part of an improvement to real property that is owned by the exempt entity upon completion of the contract. The committee considered a revised version of the bill draft that would have required the exempt entity own the property and any improvements to the property at the time the contractor enters a contract with the exempt entity.

The committee received information regarding the fiscal impact of eliminating sales and use tax liability on items purchased by or for an exempt entity and installed by a contractor. The exemption would result in an estimated loss of $44.25 million in sales and use tax collections representing three categories of contracts. The first category consisting of contracts related to highway projects, higher education facility projects, and state agency facility projects accounts for a $27.25 million reduction in sales and use tax collections. The second category consisting of contracts related to municipality projects and primary and secondary school projects accounts for a $11.7 million reduction in sales and use tax collections. The third category consisting of contracts entered with the federal government and contracts related to hospital, nursing home, intermediate and basic care, assisted living, and emergency service provider projects accounts for a $5.3 million reduction in sales and use tax collections. Sales and use tax is levied at the local level in 137 cities and 7 counties and the loss in sales and use tax collections at the local level would amount to an estimated $2.9 million.

The committee discussed the potential for portion of the lost sales and use tax collections to be offset by lower appropriations to state agencies and lower property tax bills for taxpayers as a result of sales and use tax charges no longer being built into the overall contract price. While some committee members agreed a portion of the loss sales and use tax revenue would be offset, others were not convinced contractors would reduce bids to reflect a 5 percent reduction in the cost of materials.

Conclusion

The committee makes no recommendation with respect to its study of the payment of sales and use tax by contractors.

INCOME TAX RECIPROCITY STUDY

The Chairman of the Legislative Management assigned the committee a study of the reciprocity agreement between North Dakota and Montana pertaining to the collection and payment of income tax. The study was requested due to increased cross-border employment in the western part of the state.

Background

Compensation received by an individual for services performed in North Dakota is generally taxable by North Dakota even though the individual receiving the compensation is not a legal resident of this state. This practice of taxation centers around the principle of source-based jurisdiction, whereas the state serving as the source of an individual's income has the right to tax income earned within its borders. There are some exceptions to the general rule of taxing North Dakota source income, including the exemptions applied to compensation earned by United States armed forces service members and their spouses, certain interstate commerce employees, certain nonresident individuals present in the state for a limited duration, and Minnesota and Montana residents covered under reciprocity agreements.

The Tax Commissioner has the authority to enter reciprocal agreements with other taxing officials and entities pursuant to Section 57-38-59.1. The Montana Department of Revenue is provided similar authority under Montana Administrative Code Section 15-30-26-21. The reciprocal agreement between North Dakota and Montana regarding the taxation of personal and professional service income was first entered on January 1, 1975. The most recent version of the agreement was signed by the Tax Commissioner on January 8, 2016.

The agreement provides compensation for personal or professional services earned in North Dakota by a Montana resident is not subject to income tax in North Dakota if the individual earning the compensation elects to be exempt from North Dakota withholding. The same option exists for North Dakota residents earning compensation for personal or professional services in Montana. Thus, if a Montana resident who is working and earning compensation for professional services in North Dakota files an election with the individual's employer to refrain from having North Dakota income tax withheld, the Montana resident would not be required to file a North Dakota return or remit North Dakota income tax on that compensation. However, the Montana resident would be required to file and pay tax on that compensation in Montana as, pursuant to the principle of residence-based jurisdiction, Montana has the right to tax income earned by its residents regardless of whether that income is earned outside Montana's borders.

Simplified figures can be applied to the previous example to illustrate the fiscal impacts of the agreement. For instance, assuming the amount of compensation earned by the Montana employee would result in $2,100 of income tax liability when applying Montana's income tax rates, and $2,000 of income tax liability when applying North Dakota's rates, the agreement would result in the Montana resident owing $2,100 in income tax to Montana and no income tax to North Dakota. The Montana resident also would not be required to file an income tax return in North Dakota.

Absent the agreement, the Montana resident's compensation would be subject to North Dakota income tax withholding and the Montana resident would be required to file and pay $2,000 in income tax to North Dakota. The Montana resident also would be required to file and pay income tax in Montana, but would receive a credit for any amount of tax remitted to North Dakota. Thus, the resulting amount of income tax paid to North Dakota would be $2,000 and the amount paid to Montana would be $100 after subtracting the credit for tax paid to North Dakota.

While the revenue analysis in this hypothetical is quite simple, the task of conducting a full-scale analysis encompassing all compensation impacted by the reciprocity agreement would be much more complex. This is especially true considering many Montana residents working in this state are not required to file a North Dakota tax return.

Testimony and Committee Considerations

The committee was informed by a representative of the Tax Department that the income tax reciprocity agreement between North Dakota and Montana has operated smoothly since its inception. A fiscal impact assessment of the agreement has not been conducted, but there generally have been more Montana residents working in North Dakota than North Dakota residents working in Montana. An overall negative fiscal impact on North Dakota revenue and an overall positive impact on Montana revenue is observed when analyzing the available 2013 data. The negative impact on North Dakota revenue results from the fact that the amount of Montana residents' wages exempt from North Dakota income tax is greater than the amount of North Dakota residents' wages exempt from Montana income tax. The positive impact on Montana's revenue results from Montana receiving the full amount of tax on the income of its residents working in North Dakota rather than losing a large portion of that revenue to the credit provided for taxes paid to North Dakota. On an individual level, Montana residents will pay the same amount of income tax overall, whether they have to file and pay in North Dakota and in their home state or whether they are working under a reciprocity agreement. This results from the fact that Montana income tax rates are higher than North Dakota income tax rates. A North Dakota resident working in Montana receives two benefits under the reciprocity agreement in that the North Dakota resident is allowed to pay tax at the lower North Dakota rate and is allowed the convenience of not having to file an income tax return in Montana.

The committee received a rough estimate of the fiscal impact of the agreement from representatives of the Tax Department. An estimated $3.5 million loss to North Dakota revenue was determined by applying various averages and assumptions to figures from the 2013 tax year. A more precise estimate could not be determined because the only data required to be exchanged under the agreement relates to the exemption forms employees file with their employers. A full set of data is not available to provide a more precise estimate.

The committee was informed of a more detailed study conducted regarding the income tax reciprocity agreement between Minnesota and Wisconsin. The study, conducted in 2009, cost an estimated $600,000 and involved the collection and review of income tax returns from both states. The study determined Minnesota was losing roughly $6,000,000 per year as a result of the reciprocity agreement because far more Wisconsin residents were working in Minnesota than Minnesota residents working in Wisconsin. Minnesota withdrew from the reciprocity agreement with Wisconsin in 2009.

The committee also received information pertaining to the income tax reciprocity agreement between North Dakota and Minnesota, which is broader than the agreement with Montana. While the agreement with Montana pertains only to employee's wages, the agreement with Minnesota pertains to wages, and under certain conditions, income derived from a sole proprietorship or partnership.

Some committee members expressed frustration that the state would remain party to an agreement that was negatively impacting state revenues and argued it was unfortunate Montana would not provide the information necessary to fully evaluate the fiscal impact of the agreement. Other committee members were resistant to the idea of withdrawing from a reciprocal agreement with either Montana or Minnesota in light of the difficulties that might arise for North Dakota workers employed in either state. Committee members also expressed concern the number of individuals coming to work in North Dakota from outside of this state may level as a result of the recent downturn in the energy industry.

Conclusion

The committee makes no recommendation with respect to its study of the income tax reciprocity agreement between North Dakota and Montana.

TAXATION COMMITTEE

The Taxation Committee was assigned two studies related to enhanced recovery of oil and gas:

- Section 4 of Senate Bill No. 2318 (2015) directed a study of the oil extraction tax exemption available for incremental production from a tertiary recovery project that uses carbon dioxide (CO_2). The study required consideration of the potential benefits and costs to industry, the state, and the environment of using CO_2 enhanced recovery methods. The study directed the Legislative Management to secure assistance from the Energy and Environmental Research Center (EERC) to analyze potential future usage of CO_2 in oil recovery operations in the Bakken and Three Forks Formations, the potential production and environmental benefits of that usage for energy industries in this state, the economic conditions in which that usage is feasible for oil producers, and the estimated fiscal effect of that usage for the state and political subdivisions.
- Section 42 of Senate Bill No. 2015 (2015) directed a study of the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques, including the use of CO_2, the timeline for implementing the techniques, and the estimated future annual economic impact, to evaluate existing and alternative tax incentives and recommend tax incentives that under current and foreseeable conditions, and within different oil formations, would best serve the interests of the state, political subdivisions, and fossil fuel energy production industries. Section 11 of the bill provided an appropriation of $400,000 to the Legislative Council for purposes of securing a consultant to study oil and gas tax incentives and oil and gas recovery techniques.

The Legislative Management directed the committee to receive two reports:

- Reports from the Tax Commissioner from compiled reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended (North Dakota Century Code Section 57-51-15).
- A compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year (Section 54-60.1-07).

Committee members were Senators Jessica Unruh (Chairman), Brad Bekkedahl, Dwight Cook, Jim Dotzenrod, David Hogue, Lonnie J. Laffen, and Connie Triplett and Representatives Wesley R. Belter, Jason Dockter, Glen Froseth, Patrick R. Hatlestad, Craig Headland, Tom Kading, Jim Kasper, Jerry Kelsh, Alisa Mitskog, Vicky Steiner, and Marie Strinden.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

ENHANCED OIL AND GAS RECOVERY STUDIES

Background

Ranked second out of 31 oil- and gas-producing states, North Dakota had 12,659 active wells in May 2015, and an average rig count of 83 rigs. According to information published by the Industrial Commission, statewide production averaged 1,201,159 barrels of crude oil and 1,625,624 million cubic feet (mcf) of gas per day in May 2015. For comparison, in May 2014 there were 10,916 active wells, 189 rigs, 1,040,625 barrels of crude oil per day, and 1,195,410 mcf of gas per day. The highest rig count to date was recorded in May 2012 at 218 rigs. The highest producing month was recorded in December 2014 with average daily production totals reaching 1,227,344 barrels of oil per day. Fluctuations in production lead to an ever changing landscape of infrastructure and facilities.

The state has one longstanding refinery, the Tesoro Mandan Refinery, with a processing capacity of 71,000 barrels of oil per day. A second refinery, Dakota Prairie Refining, located west of Dickinson, was completed in May 2015 and is designed to process 20,000 barrels of oil per day. The refinery was acquired in June 2016 by Tesoro and renamed the Tesoro Dickinson Refinery. The state also has several natural gas processing facilities with the three largest being the Hess Tioga plant, with a processing capability of 250 mcf of gas per day, and the ONEOK Garden Creek II and III facilities, with a processing capability of 240 mcf of gas per day. According to information published by the North Dakota Pipeline Authority, state infrastructure also includes 15 crude oil pipelines, 9 natural gas pipelines, 3 product pipelines, and 1 CO_2 pipeline.

The state's coal resources are in the form of lignite, which is a low-grade, low-sulfur coal. According to information published by the federal Energy Information Administration, mines in this state produced 27,369 short tons of coal in 2013, ranking this state ninth among the 25 coal-producing states. Active coal mines in the state include the Beulah Mine, Center Mine, Falkirk Mine, and Freedom Mine. The state also houses several coal-powered generation plants, the largest of which are the Coal Creek Station, Antelope Valley Station, Milton R. Young Station, Leland Olds Station,

Coyote Station, and the Stanton Station. The North Dakota Geological Survey estimates western North Dakota contains roughly 351 billion tons of lignite and 25 billion tons of economically mineable coal.

Oil and Gas Gross Production Tax

The oil and gas gross production tax is imposed in lieu of property taxes on oil- and gas-producing properties pursuant to Chapter 57-51. As enacted in 1953, the oil and gas gross production tax was a tax of 4.25 percent of gross value at the well of oil and gas. The total net proceeds collected from the gross production tax was $306,000 in fiscal year 1954.

In 1957 the rate of the tax was increased to a rate of 5 percent of gross value at the well of oil and gas. From 1957 to 1981 the distribution formula for proceeds of the gross production tax remained the same in Section 57-51-15. During that time, the first 1 percent of gross value at the well of oil and gas produced was credited to the general fund. After deduction of the general fund's 1 percent share in each county, the balance was distributed as follows:

- The first $200,000, 75 percent to the producing county and 25 percent to the general fund.
- The next $200,000, 50 percent to the producing county and 50 percent to the general fund.
- All remaining revenue, 25 percent to the producing county and 75 percent to the general fund.

The distribution formula was amended by the Legislative Assembly several times in subsequent years.

In 1991 the tax on gas was changed from a tax of 5 percent of the gross value at the well to an annually adjusted flat rate per mcf. An additional gross production tax exemption was added in 2003 to provide for a 24-month exemption for new or recompleted shallow gas wells.

A 2009 amendment by House Bill No. 1304, as amended by House Bill No. 1324, significantly increased allocation of oil and gas gross production taxes to political subdivisions and the oil and gas impact grant fund. The bill also provided that within 60 days after the end of each fiscal year, the board of county commissioners of a county that has received oil and gas gross production tax revenue allocations must file a report with the Tax Commissioner showing the amount received by the county, the amount expended for each purpose to which the funds were devoted, the share of county property tax revenue expended for each of those purposes, and the amount of unexpended funds remaining at the end of the fiscal year. The bill required the Tax Commissioner to compile the information from the reports and provide a report to the Legislative Management.

Laws relating to flaring of gas from oil and gas wells were revised by 2013 House Bill No. 1134, the statutory authority governing state-tribal oil and gas tax agreements was amended by 2013 House Bill No. 1005, and the North Dakota outdoor heritage fund was established by 2013 House Bill No. 1278.

Oil Extraction Tax

On November 4, 1980, the voters of the state approved Initiated Measure No. 6 on the general election ballot and established an oil extraction tax as a companion tax to the oil and gas gross production tax. The oil extraction tax is levied on the extraction of oil from the earth pursuant to Chapter 57-51.1. As originally enacted, the tax rate was established at 6.5 percent of the gross value of oil at the well, subject to full or partial exemptions. The initial extraction tax law provided exemptions for oil exempt from gross production taxes, up to 100 barrels per day of oil owned by a royalty owner, and oil from a stripper well, defined as a well producing 10 barrels or less of oil per day.

Oil extraction tax revenues were to be allocated 45 percent to the general fund, 45 percent to education funding, and 10 percent to water pipeline and resources trust fund uses. The allocation formula was amended in 1981 to allocate 30 percent to the general fund, 60 percent to education funds, and 10 percent to the resources trust fund. The allocation formula was amended again in 1983 to allocate 90 percent to the general fund and 10 percent to education funds.

In 1987 the 10 barrel per day limitation for stripper well properties was left in place for wells of a depth of 6,000 feet or less, but the limit was increased to 15 barrels per day for wells of a depth of 6,000 to 10,000 feet and 20 barrels per day for wells of a depth of more than 10,000 feet. For wells drilled and completed after April 27, 1987, and for qualifying secondary or tertiary recovery projects, the rate of tax was reduced from 6.5 to 4 percent of gross value at the well. In addition to the rate reduction, new wells completed after April 27, 1987, were given a full extraction tax exemption for the first 15 months of production. A trigger provision was included so that the rate would return to 6.5 percent if the average price of crude oil between June 1 and October 31 of any year was $33 per barrel or more. The royalty owner exemption was eliminated in 1987.

In 1989 an exemption was created for production during the first 12 months after a well had been worked over. The exemption required filing of a notice of intent to begin a workover project with the Industrial Commission before beginning the project. A qualifying project was required to have a cost of at least $65,000, which was reduced to $30,000 if

production increased by at least 50 percent during the first 2 months after completing the project. The exemption was limited to wells producing no more than 50 barrels of oil before beginning the project. The trigger mechanism was applied to the workover exemption.

In 1991 the trigger mechanism was adjusted to provide that if the oil price exceeded $33 per barrel for any period of 5 consecutive months, the exemptions and rate reductions would not apply, rather than being based on June to October prices. A reverse trigger also was instituted to reinstate the reduced rates and exemptions when the price for a barrel of crude oil was less than $33 for any consecutive 5 months. Other 1991 legislation provided for a 5-year exemption for oil produced from a secondary recovery project and a 10-year exemption for oil from a tertiary recovery project. The legislation required Industrial Commission certification of the project as qualifying for the exemption. The exemptions applied only to incremental production, defined as the total amount of oil produced minus the amount of oil that had been produced prior to the recovery project.

In 1993 the exemption for the first 12 months of production after a workover project was amended to eliminate the minimum investment of $30,000 if production was increased at least 50 percent in the first 2 months after completing the project. The change retained the $65,000 level of spending that would qualify the project for exemption if production increased by less than 50 percent. The bill also reduced the tax rate from 6.5 to 4 percent for production from a workover well after the 12-month exemption period.

In 1995 a 24-month oil extraction tax exemption was created for production from a horizontal well. The bill created a 10-year exemption for production of oil from a well that had been inactive for 2 years and a 9-month exemption for production from a horizontal re-entry well. The inactive well and horizontal re-entry well exemptions were made subject to the trigger mechanism. The limit on stripper well classification for wells deeper than 10,000 feet was increased from 20 to 30 barrels per day. Other 1995 legislation required certification by the Industrial Commission of qualifying status for wells eligible for exemptions or rate reductions. The allocation formula also was amended in 1995 to provide 60 percent to the general fund, 20 percent to education funding, and 20 percent to the resources trust fund.

In 2001 the trigger provision for exemptions and rate reductions was amended to clarify when the trigger was to become effective.

In 2003 an Oil and Gas Research Council was created and an oil and gas research fund was established with a continuing appropriation provided. A temporary exemption from gross production tax was provided for gas produced from shallow gas wells, with an expiration date of June 30, 2007. The 2-year inactive well exemption was amended to clarify the definition of a 2-year inactive well and to provide an 18-month provision to qualify the well for an exemption to be consistent with other oil extraction tax exemptions. The workover well exemption was amended to remove the requirement that a notice of intention must be filed before a workover project is commenced to qualify for an exemption.

In 2005 the Legislative Assembly provided for a sales and use tax exemption for CO_2 used for the enhanced recovery of oil or natural gas and increased the oil and gas research fund allocation to $1.3 million per biennium after the 2003-05 biennium. A sales tax exemption also was provided for machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of equipment of a new or existing oil refinery or gas processing plant.

Legislation in 2007 provided an oil extraction tax reduction to 2 percent for the first 75,000 barrels of oil during the first 18 months after completion from a horizontal well drilled and completed in the Bakken Formation from July 1, 2007, through June 30, 2008. The gross production tax exemption for shallow gas was made permanent for the first 24 months of production. An increase was provided from $1.3 million to $3 million per biennium in the amount of oil extraction tax revenues to be deposited in the oil and gas research fund.

The Governor was given authority by 2007 Senate Bill No. 2419 to enter agreements with the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation.

A 2009 amendment by House Bill No. 1235 provided a contingent rate reduction in the oil extraction tax which reduced the oil extraction tax rate for horizontal wells from 6.5 to 2 percent during the time the rate reduction was in effect. Existing law provided a complete oil extraction tax exemption that triggered into effect if the price of oil for 5 consecutive months remained below the trigger price.

A proposed constitutional amendment--2009 House Concurrent Resolution No. 3054--was placed on the 2010 general election ballot to establish the legacy fund as a constitutional trust fund. The measure was approved by about 65 percent of the voters and became effective for oil and gas production after June 30, 2011. The measure is now

Article X, Section 26, of the Constitution of North Dakota, and requires 30 percent of total revenue derived from taxes on oil and gas production or extraction to be transferred to the legacy fund.

House Bill No. 1467 (2011) extended the effective date through June 30, 2013, for a triggered oil extraction tax rate reduction. If the trigger price was reached, the first 75,000 barrels or $4.5 million of oil produced during the first 18 months from a horizontal well would be subject to a reduced tax rate of 2 percent, instead of the normal 6.5 percent oil extraction tax. The rate reduction would become effective on the first day of the month following a month for which the average price of a barrel of crude oil was less than the trigger price of $55.

Senate Bill No. 2129 (2011) made statutory changes to implement the requirements of Article X, Section 26, of the Constitution of North Dakota, requiring deposit of 30 percent of all oil and gas tax revenue in the legacy fund and 2011 House Bill No. 1451 eliminated the permanent oil tax trust fund and modified the manner in which biennial revenues from oil and gas taxes were designated for deposit in the general fund.

House Bill No. 1216 (2011) designated hydraulic fracturing--a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock--as an acceptable recovery process. This bill included an emergency clause and became effective April 11, 2011.

House Bill No. 1198 (2013) eliminated stripper well property status for wells drilled and completed or re-entered and recompleted after June 30, 2013. For wells drilled and completed or re-entered and recompleted after June 30, 2013, wells must be evaluated on an individual basis for stripper well status based on the production from the well and are not eligible for the stripper well exemption unless the individual well produces 30 barrels or less per day outside the Bakken and Three Forks Formations and 35 barrels or less per day for wells in the Bakken or Three Forks Formations. The bill provided for a reduced oil extraction tax rate of 2 percent for the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations after June 30, 2013. The bill also revised the statutory framework for the state-tribal oil and gas tax agreement.

Senate Bill No. 2014 (2013) provided that within the oil extraction tax development fund, the portion to be allocated to the resources trust fund must be reduced by 5 percent and that amount must be transferred no less than quarterly into the renewable energy development fund, but not in an amount exceeding $3 million per biennium. In addition, .5 percent of the amount credited to the resources trust fund must be transferred no less than quarterly into the energy conservation grant fund, but not in an amount exceeding $1.2 million per biennium. The funding for renewable energy source development is to be administered by the Industrial Commission and the funding for programs for energy conservation development is administered by the Department of Commerce.

House Bill No. 1134 (2013) provided for a temporary exemption for oil and gas wells employing a system to avoid flaring. The bill provided liquids produced from a collection system utilizing absorption, adsorption, or refrigeration are exempt from oil extraction tax for a period of 2 years and 30 days from the time of first production.

Coal Severance Tax

The coal severance tax is imposed on the act of removing coal from the earth pursuant to Chapter 57-61. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The coal severance tax and the coal conversion tax were enacted in 1975 following a study conducted by the 1973-74 interim Finance and Taxation Committee. The coal severance tax applies to all coal severed for sale or industrial purposes, except coal used for heating buildings in the state, coal used by the state or any political subdivision of the state, and coal used in agricultural processing and sugar beet refining plants in the state or adjacent states. The tax is applied at a rate of 37.5 cents per ton. An additional two cents per ton tax is levied for the lignite research fund.

The revenue from the coal severance tax is deposited in the coal development fund. Seventy percent of the revenue in the fund is distributed to coal-producing counties according to the amount of coal each county produces and 30 percent is distributed to the constitutional trust fund administered by the Board of University and School Lands. The trust fund is used to supply loans to school districts for school construction and loans to cities, counties, and school districts impacted by coal development.

Legislation in 2013 provided during the first month of each calendar year beginning January 2014, the State Treasurer would be required to distribute funds to offset 50 percent of the county share of coal severance tax revenue allocated to a non-coal-producing county.

Coal Conversion Tax

The coal conversion tax is imposed in lieu of property taxes on coal conversion facilities pursuant to Chapter 57-60. The land on which the plant is located remains subject to property taxes. The coal conversion tax is applied as follows:

1. Electrical generating plants are subject to two separate levies. One levy is .65 mill times 60 percent of installed capacity times the number of hours in the taxable period and the other levy is .25 mill per kilowatt-hour of electricity produced for sale. Installed capacity means the rating shown on the nameplate assigned to the turbine of the power unit. The revenue generated from the .25 mill levy electrical generating plant production is deposited in the general fund. Eighty-five percent of the revenue from the .65 percent mill levy on installed capacity is distributed to the general fund and 15 percent of the revenue is distributed to the county in which the electrical generating plant is located.
2. A coal gasification plant is subject to a monthly tax of 13.5 cents per thousand cubic feet of gas produced for sale or 4.1 percent of gross receipts, whichever is greater. Plants converting coal to products other than gas are taxed at 4.1 percent of gross receipts. The tax rate for a coal beneficiation plant is 20 cents per ton of beneficiated coal produced for sale or 1.25 percent of gross receipts, whichever is greater. Eighty-five percent of the revenue generated is distributed to the general fund and 15 percent of the revenue is distributed to the county in which the plant is located.

Legislation in 2005 provided sales tax and coal conversion tax exemptions and a reduced rate schedule for coal conversion facilities that engage in an environmental upgrade and repowering of a power plant. An "environmental upgrade" was defined as an investment of more than $25 million in machinery, equipment, and related facilities for reducing emissions or increasing efficiency. "Repowering" was defined as an investment of more than $200 million to modify or replace the process used to convert lignite coal into electric power.

Legislation in 2009 provided a coal conversion facility that achieves a 20 percent capture of CO_2 emissions during a taxable period receives a 20 percent reduction in the general fund share of the coal conversion tax, and an additional reduction of 1 percent for every additional 2 percentage points of its capture of CO_2 emissions, up to 50 percent reduction for 80 percent or more capture. The reduction is available for 10 years from the date of first capture or from the date the facility is eligible to receive the credit.

Legislation in 2013 provided a sales and use tax exemption for property used to construct or expand a facility for use of coal gasification byproducts.

Significant 2015 Legislation

Legislation in 2015 undertook a significant restructuring of oil extraction tax rates and exemptions and made several changes to tax distribution formulas.

House Bill No. 1476 provided for a restructuring of oil extraction tax rates and exemptions. The bill provides that beginning on January 1, 2016, the rate of extraction tax on all oil will be reduced from 6.5 to 5 percent. This rate is subject to change depending on the average price of a barrel of crude oil. If the average price of a barrel of crude oil exceeds the trigger price of $90 for 3 consecutive months, the rate will increase to 6 percent on all oil extracted. The rate will remain at 6 percent until the average price of a barrel of crude oil falls below the trigger price of $90 for 3 consecutive months, at which time the rate will revert to 5 percent on all oil extracted.

The bill eliminated several oil extraction tax exemptions. Production that will remain exempt from the oil extraction tax after December 31, 2015, included:

1. Production that is exempt from the gross production tax imposed by Chapter 57-51;
2. Production from stripper well property or an individual stripper well;
3. Incremental production from a secondary recovery project for 5 years from the date incremental production begins;
4. Incremental production from a tertiary recovery project that does not use CO_2 for 10 years from the date incremental production begins; and
5. Incremental production from a tertiary recovery project which uses CO_2 for 5 years from the date incremental production begins if the project is located outside the Bakken and Three Forks Formations and 10 miles or more outside an established field with a pool including the Bakken or Three Forks Formations. A subsequent change was made for the tertiary recovery exemption under Senate Bill No. 2015.

The bill also eliminated several oil extraction tax rate reductions. Production that will continue to be subject to a reduced oil extraction tax rate after December 31, 2015, includes production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation. The first 75,000 barrels of oil produced during the first 18 months after completion are subject to a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

Senate Bill No. 2015 further amended House Bill No. 1476 to remove any references to whether CO_2 is used in a tertiary recovery project for purposes of determining the duration for which the oil extraction tax exemption will apply to incremental production. The bill also provided incremental production from a horizontal well drilled and completed within the Bakken and Three Forks Formations is not exempt from oil extraction tax from July 1, 2015, through June 30, 2017, but is thereafter exempt for a period of 5 years from July 1, 2017, or the date incremental production begins, whichever is later.

House Bill No. 1176 provided for adjustments to the distribution formula for oil and gas gross production tax collections and made various changes to the distribution of revenues from the first 1 percent of the oil and gas gross production tax and the remaining 4 percent of oil and gas gross production tax.

The bill also expanded the reporting requirements for boards of county commissioners in each county receiving an allocation. The bill required that in addition to reporting the county's statement of revenues and expenditures, the board also must report the amounts allocated to the county's general fund and to townships within the county, and include the amounts expended from these allocations and the purposes of the expenditures. The bill also creates similar reporting requirements for each school district receiving an allocation.

House Bill No. 1377 created a political subdivision allocation fund for purposes of allocating oil and gas tax revenues to political subdivisions in oil-producing counties.

House Bill No. 1409 increased the funding for the North Dakota outdoor heritage fund from 4 to 8 percent of the remaining amount available from a one-fifth share of oil and gas gross production tax revenues.

Senate Bill No. 2318 provided a CO_2 capture system located at a coal conversion facility and any equipment directly used for enhanced recovery of oil or natural gas is exempt from all ad valorem taxes, and exempt from the coal conversion facilities privilege tax. The exemption does not apply to the land on which the capture system or equipment is located. The bill also created a sales and use tax exemption for materials used to construct or expand systems relating to the use of CO_2 for enhanced oil or gas recovery.

Senate Bill No. 2036 provided an exemption from the coal conversion facilities privilege tax for beneficiated coal produced for use within a coal conversion facility. The bill also extended the severance tax exemption available for coal purchased for improvement through beneficiation which is then used in an agricultural commodity processing facility or in any facility owned by the state or a political subdivision. This exemption was scheduled to expire on July 1, 2015. The bill also extended the sales tax exemption available on gross receipts from the initial sale of beneficiated coal that is not subject to tax under Chapter 57-60. The exemption was scheduled to expire on July 1, 2015. The bill extended the sales and use tax exemption available for certain purchases made by power plants classified as electrical generating plants which convert beneficiated coal into electrical power. This exemption was scheduled to expire on July 1, 2017.

Senate Bill No. 2343 required the Industrial Commission to provide a report to the Legislative Assembly, or the Budget Section if the Legislative Assembly is not in session, on the fiscal effect of any order, regulation, or policy regarding the control of gas and oil resources estimated to have a fiscal effect in excess of $20 million in a biennium. The reporting requirements do not apply to spacing unit orders.

Senate Bill No. 2318 created a sales and use tax exemption for materials used to construct or expand a system for compressing, gathering, collecting, storing, transporting, or injecting CO_2 for use in enhanced recovery of oil or natural gas. The bill also provided for a coal conversion facilities privilege tax exemption for CO_2 capture systems.

Senate Bill No. 2035 created a sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility.

Senate Bill No. 2037 expanded the items included in the definition of machinery and equipment used to produce coal from a new mine for purposes of a sales tax exemption and allowed for purchases of machinery or equipment made after December 31, 2010, to produce coal either directly or indirectly, to qualify for a refund of sales or use tax paid.

Prior Legislative Management Studies

The 2013-14 interim Energy Development and Transmission Committee studied likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future. The study directed the Legislative Management to obtain the services of an independent consultant with demonstrated insight into current and future production advances, including use of CO_2 and water or other means of enhancing production, effects of mature production areas on state and local tax policy, future infrastructure needs, and environmental considerations. The committee secured the services of a consultant who provided a final report containing an economic analysis of the Bakken and Three Forks Formations; information on the socioeconomic impacts of employment, population projections, and housing needs; and

information on CO_2 enhanced oil recovery. The study of 2014-19 trends predicted North Dakota drilling levels will remain stable, North Dakota production could reach 2 million barrels per day, oil prices will average between $70 and $100 per barrel, and the global need for oil will absorb oil produced from United States shale. The study also identified technology changes that could affect production, including three dimensional field development, batch development, adequately sized gathering systems, reliable systems to move product to market, field consolidation, and automation. The study highlighted environmental changes that could affect production including state regulations in border states, tribal regulations and development requirements, flaring regulations, and local regulation of crude oil trains. Policy issues that could affect production also were identified as potential crude export rule changes, the tightening of oil supply due to international conflict, and federal regulation changes on depletion allowances.

Enhanced oil recovery was identified as the next phase of development for the Bakken Formation. Around 5 to 6 percent of oil is recovered from the Bakken Formation and an increase in production of 1 percentage point would provide 3 billion to 5 billion barrels of oil. The study indicated CO_2 is the leader for enhanced oil recovery because CO_2 mollifies Bakken oil very well in tests, but the technology is not expected to be employed at high rates and will not substantially affect oil development in the next 5 years. Nitrogen was viewed as the leading mechanism for a few years, but has been found to be not compatible with Bakken oil. There are pilot projects in the Parshall field using water. The study found that the demand for CO_2 to fully apply enhanced oil recovery in the Bakken Formation is 2 billion to 3.2 billion tons, which conservatively would yield 4 billion to 7 billion barrels of incremental oil. The main concern of the oil industry was not the technology, but having enough CO_2. The output of CO_2 of all the power plants in this state is 33 million tons.

The study also indicated the Great Plains Synfuels Plant is the only commercial coal gasification facility producing synthetic natural gas. The plant produces CO_2, which is transported to Canada for sequestration; however, information was received indicating the contract would be expiring. The study found older oilfields near the existing CO_2 pipeline are capable of using CO_2 for enhanced oil recovery. The study indicated industry is catching up on infrastructure because of the provision of new capital, including capital to midstream pipeline companies, but the infrastructure is at least 1 year behind. The study also indicated it is harder to increase gas gathering than oil gathering capacity. Most gas gathering systems are overlaying two times the infrastructure to increase capacity. Oil gathering is designed with excess capacity, and there are other methods of increasing capacity. Large oil transmission lines are being built, and gathering systems will have multiple choices. The study found because of batch drilling and large initial productions, there will be issues with pipeline capacity.

Consultant Services

Request for Proposals

Section 11 of 2015 Senate Bill No. 2015 provided an appropriation of $400,000 to the Legislative Council for purposes of securing a consultant to study oil and gas tax incentives and oil and gas recovery techniques. The committee made a request for proposals for consulting services and received two proposals. A proposal submitted by IHS Energy quoted a price of $150,000 for technical analysis and $245,000 for economic analysis for a total cost of $395,000. A proposal submitted by a team headed by the EERC quoted a price of $125,148 for technical analysis and $274,624 for economic analysis for a total cost of $399,772. The committee selected IHS Energy for the provision of consulting services.

Consultant Reports

The committee received monthly progress reports, an interim report, and a final report from representatives of IHS Energy. The reports indicated CO_2 enhanced oil recovery has the potential to yield 1.2 billion to 1.8 billion barrels of incremental production in the state over the next 20 years. The combined enhanced oil recovery activities in the Bakken Formation and in conventional fields has the potential to contribute approximately 6,000 jobs at the state level and 4,300 jobs at the national level, per year, for years 2022 through 2036. Direct revenues to the state from combined enhanced oil recovery activities in the Bakken Formation and in conventional fields could range from $6.3 billion to $9.7 billion during the study period. However, with the current lack of technology, low oil prices, and high costs of CO_2, the economics for CO_2 enhanced oil recovery do not work. A forward-looking process would be required to develop the technology to capture CO_2 in a more cost-effective manner and determine how to best inject CO_2 for purposes of enhanced oil recovery.

IHS Energy reviewed 800 fields during its study to determine which were best suited for enhanced recovery. Eighteen of the 800 fields were used for modeling purposes. The four primary components of the model included cost modeling, price forecasting, field development analysis, and fiscal modeling based on North Dakota's current fiscal system. The study determined use of CO_2 for enhanced recovery would be the most successful method of recovery and would also contribute environmental benefits.

The reports indicated there is more certainty regarding enhanced oil recovery in conventional plays because the technology used in conventional plays is proven. Barriers to enhanced oil recovery in conventional plays center around the availability and affordability of CO_2. The price of oil would need to exceed $100 per barrel for the majority of enhanced oil recovery projects in conventional fields to break even in terms of costs. The high costs associated with enhanced oil recovery in conventional fields are related to a number of factors, including the age of the fields and the condition of the

wells. The cost to convert an existing production well into an injector well is $250,000 to $300,000 and the cost to drill an entirely new injector well is $5.6 million to $6.6 million. Conventional fields that make the best candidates for CO_2 enhanced oil recovery are fields that have had a successful water flood.

Estimates based on modeling high- and low-case scenarios for conventional fields for the 2017 through 2036 timeframe range from 18 million to 35 million barrels of incremental oil with direct state revenues of $139 million to $439 million. Costs to industry range from $1.3 billion to $2.3 billion and the amount of CO_2 required is estimated at 5.7 million to 11.5 million metric tons during the same period. Significant recovery from enhanced recovery would likely not be seen until the mid to late 2020s.

The reports indicated a wide range of uncertainty surrounds enhanced oil recovery in unconventional fields. Factors that will impact the development of CO_2 enhanced oil recovery in unconventional plays include advances in technology, access to economical and abundant supplies of CO_2, and incentives that encourage the use of CO_2 for enhanced oil recovery. The technology pertaining to unconventional plays is only at the modeling and laboratory stage and is beginning to reach the pilot stage. Early modeling has been conducted for CO_2 enhanced oil recovery in the Bakken Formation, but the actual results from initial injection tests did not produce as robust results as were seen in the laboratory. The use of enhanced oil recovery in unconventional fields is an attractive prospect due to the large amount of original oil in place (OOIP). Because there are an estimated 167 billion to 900 billion barrels of OOIP in the Bakken Formation, recovering only 5 percent of that amount would equate to 8.4 billion to 45 billion barrels of oil.

Estimates based on modeling high- and low-case scenarios for the Bakken Formation for the 2017 through 2036 timeframe range from 254 million to 473 million barrels of incremental oil with direct state revenues of $4.7 billion to $7.4 billion. Capital investment cost to industry range from $6.5 billion to $7.7 billion and operating costs range from $28.5 billion to $39.2 billion during the same period. The total amount of CO_2 required is estimated at 233 million to 307 million metric tons. Cost associated with purchasing CO_2 account for approximately 30 percent of operating costs. Approximately 56 percent of the required CO_2 could be captured from sources in this state. The annual demand for CO_2 is expected to reach 35 million metric tons per year beginning in 2035.

The committee received information regarding the three main sources of CO_2, which include naturally occurring CO_2 fields, CO_2 captured from gas processing plants, and CO_2 captured from other industrial plants, such as power plants. Carbon dioxide from naturally occurring sources is the most prevalent source of CO_2 used in enhanced oil recovery projects due to the low cost of supply. Enhanced oil recovery projects are typically located within reasonable proximity to CO_2 sources due to the high costs of transporting CO_2. Three main areas where CO_2 enhanced oil recovery projects are occurring are in the Permian Basin, the Gulf Coast, and Wyoming. The Permian Basin projects source CO_2 from naturally occurring CO_2 fields in Colorado and New Mexico and from nearby gas processing plants, the Gulf Coast projects source CO_2 from the Jackson Dome CO_2 field and nearby industrial plants, and the Wyoming projects source CO_2 from two large gas processing plants.

The committee received testimony which indicated the estimated cost to capture CO_2 at power plants is $115 per ton. If new technology brings the price to $50 to $60 per ton, it would narrow the gap between the price of CO_2 from power plants and the price of CO_2 from other industrial sources, which is currently at $37 per ton. North Dakota potentially could source CO_2 from Wyoming for use in enhanced oil recovery projects if current CO_2 pipelines are extended into this state. The primary candidate for CO_2 sourced from within this state would be CO_2 derived from the Dakota Gasification Company once existing contracts for the company's CO_2 expire. There is potential for five of the state's coal-fired plants to invest in carbon capture technology, but the price to retrofit those plants would be approximately $7.46 billion. The five retrofitted plants could capture 30 to 40 percent of CO_2 emissions, or 9.8 million tons of CO_2 per year. The objective of developing CO_2 capture technologies for power plants is to bring the price of capture down to $30 per ton of CO_2.

The committee received information regarding the Petra Nova coal-fired plant in Texas, which is being retrofitted with carbon capture technology. Over $1 billion has been invested in the plant and it is projected the cost to capture CO_2 at the Petra Nova plant will be $50 per ton. The committee also received information regarding carbon capture technology at a plant in Saskatchewan.

The committee received information regarding federal programs that promote carbon capture and sequestration, including enhanced oil recovery tax credits, CO_2 sequestration credits, investment credits for advanced coal projects, and loan guarantees. Federal credits have had the largest impact on CO_2 enhanced oil recovery projects. Section 45Q of the Internal Revenue Code offers a $10 credit for enhanced oil recovery and a $20 credit for carbon capture and sequestration per ton of CO_2. The federal credit is available only for the first 75 million tons of CO_2. Fifty-three active capture technology projects are receiving funding from the United States Department of Energy, but many projects that receive federal funding end up losing the grants for failing to meet designated benchmarks.

The committee received information on the various state incentives and learned most states offer incentives relating to the capture of CO_2 from power plants for sequestration or use in enhanced oil recovery. The information suggested the extent to which the availability of state incentives have contributed to advancing CO_2 enhanced oil recovery is questionable. Based on the current break-even prices determined under the study, no combination of incentives would be sufficient to make certain projects move forward.

The committee received various policy alternatives the state may wish to consider to encourage CO_2 enhanced oil recovery activities. One policy option would be to offer a deduction against oil extraction tax liability for CO_2 operating costs associated with enhanced oil recovery in the Bakken Formation and in conventional fields. The study considered $5 and $10 credits per ton of CO_2 for enhanced oil recovery in both the Bakken Formation and in conventional fields. A 50 percent reduction in oil extraction tax and gross production tax also was considered. The committee was informed these policy options would be in lieu of the current 5-year and 10-year oil extraction tax exemptions for tertiary recovery projects. Policy options that would be in addition to existing incentives include a 50 percent reduction in gross production tax and a $400,000 credit against oil extraction tax liability per injector well, but would only apply to conventional wells. State policy options most comparable to the federal credit would be the $10 per ton credit against oil extraction tax liability or a deduction for CO_2 operating costs. The committee was informed the deduction for operating costs might be more difficult to administer. The committee also reviewed information regarding how incentive options would translate when using other types of gasses for enhanced oil recovery.

Based on the study results, the consultant's recommendations were for the state to encourage research and development activities to determine the technological and commercial feasibility of CO_2 enhanced oil recovery, especially in the Bakken Formation. Funding from the state or federal government to run more pilot projects in the Bakken Formation also might encourage companies to invest and form joint public and private partnerships. The state could consider incentivizing the development of CO_2 capture technology, which would carry the added benefit of improving the environment. Income tax reductions also could be considered to encourage power plants to invest in carbon capture technology. Testimony indicated enacting tax incentives sends a message to industry that the state is willing to encourage investment in new technologies. However, a combination of factors, including higher oil prices, increased technology, and a more abundant and affordable supply of CO_2 would need to come together before enhanced oil recovery would be successful in North Dakota.

Testimony and Committee Considerations

Enhanced Oil and Gas Recovery Methods

The committee received information from a representative of the Department of Mineral Resources, regarding primary, secondary, and tertiary phases of oil production and various recovery methods. Ninety-five percent of the production in this state is primary production that uses a reservoir's natural pressure for recovery. Approximately 15 percent of the total OOIP in a conventional reservoir can be recovered using primary recovery methods. An additional 15 percent of the OOIP in a conventional reservoir can be recovered using secondary recovery methods and an additional 10 percent can be recovered using tertiary recovery methods. In an unconventional reservoir, such as the Bakken Formation, primary recovery methods will yield about 3 to 5 percent of the OOIP. It is unknown which types of secondary and tertiary recovery methods will prove successful in the Bakken Formation. Because the Bakken Formation contains over 300 billion barrels of OOIP, development of an enhanced recovery method that could increase recovery by 1 percent would yield 3 billion barrels of oil.

The committee received information regarding secondary recovery methods in conventional reservoirs and in the Bakken Formation. Water flooding increases the pressure in a reservoir, and there are 71 active water floods in the state, nearly all of which have been commenced within the last 20 years. Water flooding involves large capital expenditures because the number of required wells typically double and producers also have to contend with transportation costs and cost related to pressurizing and injecting water into the reservoir. Only three water flooding projects have been attempted in the Bakken Formation, all of which have been unsuccessful.

The committee received testimony regarding recovery using high-pressure air injection. Air injection is costlier than water flooding because it requires twice as many well bores and large air compressors. Air injection also yields lower recovery rates than water flooding and may contaminate a reservoir's natural gas stream to the point at which it can no longer be sold. The committee was informed only one horizontal fire flood has been attempted in this state. Because the producer must start the fire flood without exploding wells in the process, the use of fire flooding is a difficult maneuver.

Recovery using rich gas injection entails injecting produced gas back into a well. Rich gas injection is practiced in Alaska and can recover almost as much oil as CO_2 injection. Only two rich gas injection projects have been attempted in this state and both were discontinued because the operators found more economical recovery methods. The Department of Mineral Resources has approved one permit for a company to test rich gas injection in the Bakken Formation and the test will be the best field test available to determine whether CO_2 injection in the Bakken Formation

would be a feasible method of recovery. The committee was informed producers are flaring 18 percent of all gas produced in the Bakken Formation.

The committee received information from representatives of the EERC regarding the potential for enhanced recovery using CO_2. The EERC has identified approximately 20 oil fields in the state with the potential for enhanced recovery using CO_2. The EERC has effectively extracted 100 percent of the oil from rock samples from the Bakken and Three Forks Formations and 75 to 85 percent of the oil from shales in a laboratory setting. The estimated amount of incremental production from unconventional reservoirs in this state is roughly 300 billion to 900 billion barrels of oil. The EERC is working on solutions for using CO_2 for enhanced recovery.

The committee was informed it is not necessary to employ water flooding prior to using CO_2. Reservoirs in Texas have transitioned directly from primary recovery to recovery methods using CO_2. Recovery using CO_2 is substantially more expensive than recovery using water flooding. Recovery using CO_2 requires twice the operating costs and twice the investment costs as recovery using water flooding. Unlike a primary recovery project, an operator will not postpone a CO_2 recovery project in a low-price environment because once a CO_2 recovery project is commenced, it cannot be ceased without causing damage to the reservoir. The testimony indicated it is important to consider the upfront investment costs, and the amount of time it will take a producer to recover those costs, when considering tax incentives for various production methods. According to information presented, North Dakota lacks the amount of CO_2 necessary for enhanced oil recovery.

The committee also received information regarding reservoir protection and the prevention of waste. The committee reviewed the definition of waste as provided in the Interstate Oil and Gas Compact Commission's 2004 Model Oil and Gas Conservation Act and regulations in place in Texas and Oklahoma to prevent waste.

Federal Clean Power Plan Implications

The committee's discussions were influenced by recent developments pertaining to the federal Environmental Protection Agency's (EPA) Clean Power Plan which aims to reduce CO_2 emissions nationally by 32 percent by the year 2030 as compared to 2005 emissions. The committee received information from a representative of the Attorney General's office regarding the status of legal action pertaining to the EPA's regulation of CO_2 emissions. The EPA conducted a series of rulemaking actions over the last several years to regulate CO_2 emissions for new and existing power plants pursuant to the Clean Air Act. Section 111(b) of the Clean Air Act pertains to emissions from new, modified, or reconstructed power plants and Section 111(d) of the Clean Air Act, commonly referred to as the Clean Power Plan, pertains to emissions from existing power plants. The EPA issued proposed rules, beginning as early as March 2012, pertaining to Sections 111(b) and 111(d) and issued final rules in October 2015.

The committee was informed North Dakota went from having one of the least stringent emission reduction goals under the proposed rules to one of the most stringent emission reduction goals under the final rules. Under a rate-based calculation, using pounds of CO_2 emitted per megawatt hour of electricity produced, North Dakota's required reductions increased from a 24.7 percent required reduction under the proposed rules to a 44.9 percent required reduction under the final rules. Multiple states filed petitions for review in opposition to the 111(d) rule, which were consolidated into the case of *West Virginia v. EPA*, and the 111(b) rule, which were consolidated into the case of *North Dakota v. EPA*. Various parties also intervened in support of the EPA, including environmental groups, public health organizations, power companies, and several states. Multiple states also filed motions to stay implementation of the 111(d) rule while litigation is pending because a tremendous amount of state resources would need to be dedicated toward preparing to comply with the rule's requirements. The motion to stay was granted, thus alleviating North Dakota's requirement to submit a final plan for compliance with the rule, or an initial draft of the plan with an extension request, by September 2016.

The committee received testimony from a representative of the State Department of Health which indicated the department is the state agency tasked with implementing the requirements under the Clean Air Act. A state's plan to comply with the requirements of the Clean Air Act must be enforceable at the state and federal level, and if a state chooses not to develop its own plan, a federal plan may be imposed it its place. The testimony indicated the state could see substantial impacts as a result of the final rules, including increased electricity prices due to the drastic CO_2 emission reductions required under the rules. The state had been making substantial reductions in emissions, reducing emission levels by 11 percent by 2014 as compared to 2005 emission levels despite increased load growth resulting from increased activity in the Bakken Formation.

The testimony suggested the new rules would force the State Department of Health to consider additional factors, such as conservation efforts and alternative energy generation sources when formulating a state plan for compliance. The department has hosted several meetings across the state to receive public input on the rule, and concerns expressed at the public meetings included concerns regarding the potential impact of the rule on jobs and the state's energy industry. Fifty-five percent of the electricity generated in North Dakota is transferred to other states and much of that energy is generated by coal-fired sources. If the rule results in the closure of coal plants, the residents of the state

potentially could see a 40 percent increase in energy costs. Testimony indicated it is important for the state to look at an energy policy that addresses CO_2 emissions over the long term. It was argued technology supporting carbon capture and sequestration should be pursued considering the state's 800-year supply of minable coal.

The committee received testimony pertaining to the Clean Power Plan from a representative of the Lignite Energy Council. The Lignite Energy Council has yet to identify a compliance solution that would not involve closing coal plants if the rules under the Clean Power Plan remain unchanged. The option of applying post-combustion capture technology to existing plants would be extremely costly and would need to be applied to all power plants in the state operating at more than 450 megawatts and capture 90 percent of emissions to comply with the EPA's goals by 2030. The cost to apply comparable technology to a 150 megawatt plant in Canada was roughly $600 million and the plant has experienced complications with the technology operating on a reliable basis. An alternative option would be for the state to build an additional 6,000 megawatts of wind-powered generation to build enough CO_2 credits to allow the state's coal-fired plants to continue to operate. The state only received credit for renewables installed after 2012 and as a result of the recent wind build-up in the state, many of the prime spots for wind generation already have been used. Difficulties also would arise in incorporating any additional wind energy into the state's electrical grid.

The committee received information from a representative of Basin Electric Power Cooperative to gain a better understanding of the changes that would need to be made to comply with the requirements under the Clean Power Plan. The company would need to add 1,350 megawatts of new wind-powered capacity, in addition to the 500 megawatts for which the company has already contracted, and 1,740 megawatts of new natural-gas-fired capacity. Incorporating this level of additional capacity would require over 500,000 acres of land for wind farms and associated faculties and, assuming a 100 percent success rate, would require 15 nearly simultaneous permitting processes and major projects. Over 1,000 substantial pieces of equipment would need to be purchased and over $5 billion expended in project costs to meet the EPA's stated goals for 2022.

Committee members expressed concerns that the direction of the study may need to shift more heavily toward incentivizing the use of CO_2 for enhanced recovery in light of the requirements the state must meet under the Clean Power Plan.

Carbon Dioxide Resources

The committee received testimony from a representative of the EERC which indicated the United States Department of Energy estimates there are 137 billion barrels of recoverable oil that could be obtained in the United States using CO_2 enhanced oil recovery. The total amount of oil produced using CO_2 enhanced recovery is approximately 350,000 barrels per day with the majority of production coming from west Texas and smaller amounts coming from Wyoming, Montana, Mississippi, and Louisiana. North Dakota power plants emit over 30 million tons of CO_2 per year, which is almost the precise amount needed for a full build out of the Bakken Formation. The state does not have any natural sources of CO_2.

Representatives of IHS Energy testified the limited supply of CO_2 would be the biggest obstacle to using CO_2 for enhanced oil recovery. Companies will not undertake an enhanced oil recovery project unless they have secured a relatively economical source of CO_2. Enhanced oil recovery has been successful in the Permian Basin because there are natural sources of CO_2 in close proximity to oil fields. The majority of CO_2 enhanced recovery projects are full-cycle projects in which one company takes on the entire process, from capture to injection. Acquiring CO_2 from sources in southwest Wyoming also would be less costly than capturing CO_2 from smokestacks considering a capture cost of $3 to $4 per thousand cubic feet. Advances in technology would be required to reduce retrofit costs.

The committee received information from a representative of Basin Electric Power Cooperative regarding an overview of the operations of the Dakota Gasification Company's Great Plans Synfuels Plant. The Great Plains Synfuels Plant has been capturing CO_2 since 2000, and captures roughly 3 million tons of CO_2 per year. The plant transports captured CO_2 along a 205-mile pipeline for sequestration in Canada. Strategically placed taps are positioned along the pipeline which could be used to supply CO_2 to Williston Basin oil fields should CO_2 enhanced oil recovery begin to be used in North Dakota. The company delivered its 30 millionth metric ton of CO_2 to Saskatchewan for use in enhanced oil recovery in February 2015. The plant operates as a closed system and captures any plant emissions for further separation into various byproducts. The system can be contrasted with a typical power plant, such as the Antelope Valley Plant, where coal is pulverized, sprayed into a boiler, burned, and then CO_2 is emitted into the atmosphere. The testimony indicated the plant does not capture enough CO_2 for use in enhanced oil recovery in this state even after diverting the CO_2 being sent to Canada. Hundreds of millions of dollars would need to be invested for the plant to capture increased amounts of CO_2.

The committee received information from representatives of Denbury Resources, Inc., pertaining to an overview of the company's operations and any plans for the company's future expansion in this state. The company owns two CO_2 supply sources and operates over 1,100 miles of CO_2 pipelines. The company secures CO_2 from both manmade and natural sources and transports CO_2 in a liquid state at high pressure. Denbury's operations were producing approximately

74,000 barrels of oil per day during the first quarter of 2015, 41,000 barrels of which were produced using CO_2 enhanced recovery. The company's dealings in North Dakota began in March 2010 with the acquisition of Encore Acquisition Company. The acquisition included roughly 300,000 acres of the Bakken Formation, the Cedar Creek Anticline field, the Bell Creek field in Montana, and several other smaller oil fields. The company has invested roughly $1.18 billion in the state since December 2014 and is planning to extend its Greencore Pipeline to the Cedar Creek Anticline. Denbury estimates the Cedar Creek Anticline contains roughly 260 million to 290 million barrels of recoverable oil using CO_2 enhanced recovery.

The testimony indicated Denbury's business model is very capital intensive and the majority of the company's capital investments are made before any oil is produced. The cost to construct the 15-mile pipeline required to transport CO_2 to Denbury's fields in North Dakota would be approximately $30 million. In addition a field's existing flow lines and injection lines typically need to be replaced to handle the corrosive qualities of liquefied CO_2. Separation plants also would need to be constructed to remove CO_2 from recovered production so the CO_2 can be reinjected in the reservoir. Denbury would need to invest approximately $550 million to bring CO_2 enhanced oil recovery to North Dakota. The company would pipe CO_2 into North Dakota from outside sources for use in enhanced recovery in this state. The committee was informed the company would consider using other sources of CO_2 as those sources became available. Denbury plans to continue to bring CO_2 to the Cedar Hills Anticline, but the decision to go forward with a CO_2 enhanced recovery project in North Dakota depends on a variety of factors, including the price of oil, the state's tax environment, and opportunities that may arise elsewhere.

Committee members noted the information received by Denbury highlights the importance of providing certainty in tax policy. Committee members also generally agreed that when making changes to tax policy, policymakers must be aware of the message sent to companies that have invested, or are planning to invest, substantial funds in the state.

Emerging Technologies

Committee members noted the economics associated with obtaining enough CO_2 for enhanced recovery seems to be the driving factor in a company's decisionmaking process and there seems to be uncertainty regarding the success of enhanced oil recovery projects. The committee received information from the EERC indicating the EERC has worked on over 20 retrofit technologies and a large amount of energy has been aimed at making carbon capture technology technically and economically viable. The committee also received information regarding additional emerging technologies related to CO_2.

The committee received information from a representative of the Lignite Energy Council regarding the Allam Cycle project. The Allam Cycle technology is one of the potential solutions for new power plants in complying with CO_2 emission reduction requirements. The Allam Cycle is an alternative means of producing power which gasifies lignite coal and uses supercritical CO_2 rather than steam to spin turbines and generate electricity. The Lignite Research Council has provided funding to explore this technology and the Lignite Energy Council has been working with the EERC to further develop and test the Allam Cycle. The testimony contended supportive tax policy regarding the development of the Allam Cycle would make the project easier for utilities to fund and easier for the investment community to support. The cost of electricity produced using the Allam Cycle would be competitive with electricity produced using natural gas and would provide long-term price stability for consumers. Approximately one-third of the estimated load growth over the next 20 to 30 years potentially could be met with power generated using the Allam Cycle. Plants using the Allam Cycle could use the same fuel source as existing coal-fired plants and be located at the same plant site because they are so compact. The committee learned the main obstacle encountered when trying to gasify lignite, compress it, and then use supercritical CO_2 as a working fluid is corrosion. Industry representatives will be traveling to Texas in late 2016 to tour an Allam Cycle project and assess the progress being made with the new technology.

A representative of the Lignite Energy Council provided information regarding the Kemper County Energy Facility in Mississippi which is equipped with the best technology available for CO_2 capture and storage. The facility captures and stores CO_2 from coal combusted within the facility. The facility cost over $6 billion to construct, which was more than $3 billion over the initial budget estimates; however, the technology implemented in the facility is working as expected. The facility has been producing electricity using natural gas as a feedstock for almost a year and will ultimately produce synthetic natural gas from lignite and use that gas as a fuel to power turbines to produce electricity. This type of facility, though expensive to develop at the outset, provides price certainty over the long term. The Kemper County Energy Facility was expected to be running exclusively on lignite by February 2016, and CO_2 produced from the plant will be captured and shipped to neighboring oil fields for use in enhanced oil recovery. The facility is employing the same concepts as Dakota Gasification Company's Great Plains Synfuels Plant except on a much larger scale.

Existing Incentives Related to Enhanced Recovery

The committee received information regarding tax incentives associated with enhanced recovery of oil and gas and the usage and fiscal impact of each incentive. The committee received information on the following incentives:

- Oil extraction tax exemptions for incremental production from a secondary or tertiary recovery project;

- A sales and use tax exemption for materials incorporated into specified CO_2 systems for use in enhanced oil recovery;
- A sales and use tax exemption for CO_2 used for enhanced oil recovery;
- A sales and use tax exemption for environmental upgrade materials used in power plants and processing plants;
- Carbon dioxide capture system exemptions from ad valorem and coal conversion facilities privilege tax;
- Property tax exemptions for pipeline property and associated transportation and storage equipment used for CO_2 enhanced oil recovery; and
- A coal conversion facilities privilege tax credit for the capture of CO_2 emission.

The committee received testimony from a representative of the Dakota Gasification Company which indicated the company claimed $1.9 million in CO_2 capture credits in 2015. The CO_2 capture credit provides a credit against the coal conversion facilities privilege tax for achieving a 20 percent capture of CO_2 emissions. The credit was enacted in 2009 and is equal to a 20 percent reduction in the general fund share of the coal conversion facilities privilege tax imposed during the taxable period. An additional 1 percent reduction in the general fund share of the tax is allowed for every additional 2 percentage points of CO_2 emission capture, up to a 50 percent reduction for 80 percent or more capture. The operator of a coal conversion facility is required to report to the Legislative Council on an annual basis regarding certain aspects of the CO_2 capture project. The credit expires in 2019.

Proposed Incentives

The committee received testimony from a representative of the EmPower ND Commission regarding the commission's policy recommendations relating to the committee's study of enhanced recovery. The commission provided the following three recommendations, which also were provided to the interim Energy Development and Transmission Committee:

- Provision of incentives for the capture and use of CO_2;
- Investment in foundational research relating to the state's energy resources; and
- Investment in research and development for large-scale commercialization opportunities, such as the Allam Cycle.

The committee was informed the EmPower ND Commission discussed the potential for an incentive for CO_2 enhanced oil recovery which would be capped based on a certain amount of CO_2 used or a certain number of barrels of oil recovered. The idea behind the incentive would be to reward early actors for taking a risk in developing CO_2 capture technology and CO_2 enhanced oil recovery technology. Placing a limit on the tons of CO_2 used or barrels of oil recovered would give the state certainty regarding the cost of the incentive.

Taking into account testimony received and incentive options provided by IHS Energy, the committee considered a bill draft that would have provided for a $10 credit against oil extraction tax for each ton of CO_2 purchased or acquired for use in enhanced oil recovery in this state. The bill draft would have required oil producers to report to the Industrial Commission the amount of CO_2 initially injected into an oil reservoir in this state and would have required the Industrial Commission to certify those amounts to the Tax Commissioner. If a purchaser of oil, rather than the producer of oil, was filing and paying the tax, the bill draft would have required the purchaser to include documentation provided by the producer verifying the amount of the producer's credit to be deducted from the tax due. Information provided by the Tax Department indicated the fiscal impact of the credit would be negligible for the upcoming biennium, but would be difficult to project for future periods. The bill draft also would require the Tax Department to modify certain reporting forms to apply the credits and make database changes to effectively process the credits.

The committee received comments from a representative of the Lignite Energy Council indicating the Lignite Energy Council supported the goals of the committee, but the concepts in the bill draft may need to be refined further in light of recent developments.

Industry representatives and a group of legislators took part in a tour of facilities in Texas which demonstrated an alternative balance of incentives may better address the goals of the study and market conditions and advancements in technology are not to the point at which the state's supply of CO_2 could be monetized to the degree of necessitating the bill draft the committee was considering. Testimony indicated a $10 per ton credit would not be enough to spur industry to undertake the $800 million of infrastructure costs associated with capturing CO_2 emissions. Other factors, including large federal and industrial investments, would be needed to bridge the gap in making projects economically feasible. Industry also would need reassurance the price of oil would remain high enough for projects to remain economically feasible.

The committee received comments from a representative of Basin Electric Power Cooperative who agreed the structure of the proposed incentive could benefit from modifications regarding the proposed beneficiaries. Industry, state, and federal resources likely would need to come together to make CO_2 capture projects work because it would cost roughly $50 million to $70 million per ton of CO_2 captured to place the necessary capture equipment on power plants. Advances in CO_2 capture and the use of CO_2 for enhanced recovery also need to be made before the economics of CO_2 enhanced oil recovery would make sense for oil producers. Additional research is being conducted to determine the amount of CO_2 that could be used in conventional wells and the amount of CO_2 that could be captured from coal-fired plants in this state. The committee received a recommendation that the issue be further studied during the 2017-18 interim at which time discussion of a bill draft focusing on where these two amounts coincide would be ripe for discussion. It was suggested developments expected to occur throughout 2017 also would lead to a more informed discussion during the 2017-18 interim.

Committee members participating in the tour in Texas agreed the solution to achieving enhanced oil recovery lies in incentivizing both the producers and users of CO_2. Additional committee members expressed similar sentiments regarding the need to shift the placement of incentives and to focus on additional research to bring about advancements in technology.

Distribution of Revenue and Research Funding

In considering potential funding sources for research relating to CO_2 capture and enhanced oil recovery, the committee received information regarding the revenue generated by the oil extraction tax, gross production tax, coal severance tax, and coal conversion tax and reviewed the funds to which the revenue is distributed and the estimated revenue distributions for the 2015-17 biennium as of October 2016. The committee also received information from the State Treasurer regarding past distributions of coal conversion facilities privilege tax and coal severance tax revenues to political subdivisions and information from a representative of the Tax Department regarding historical collection data pertaining to both taxes.

The committee reviewed information pertaining to the lignite research fund and received information from a representative of the Industrial Commission regarding the oil and gas research fund. The Industrial Commission oversees the Oil and Gas Research Program, which is funded by a percentage of the state's share of oil and gas gross production tax and oil extraction tax revenues. Every dollar awarded from the oil and gas research fund must be matched dollar-for-dollar with other funds. The committee received information regarding six ongoing contracts between the Oil and Gas Research Program and the EERC. The funding for the Bakken CO_2 Storage and Enhanced Oil Recovery Program has totaled over $2.5 million, with the majority of the funding provided by the United States Department of Energy. The purposes of the Bakken CO_2 Storage and Enhanced Oil Recovery Program is to develop improved tools and techniques to evaluate fluid flow in tight rocks to determine the potential for enhanced oil recovery in the Bakken using CO_2. Reduced oil prices are not expected to impact funding for the Oil and Gas Research Program because the program is one of the first items funded with oil and gas gross production tax and oil extraction tax revenues.

The committee considered other sources of revenue that potentially could be directed toward funding continued research and committee members generally agreed additional investments in research and development may be required to move the potential for CO_2 capture and enhanced oil recovery forward.

Conclusions

The committee makes no recommendations with respect to its studies of enhanced oil recovery.

Reports

Oil and Gas Gross Production Tax Allocation Reports

The committee was assigned the responsibility to receive an annual report from the Tax Commissioner from compiled reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended. The report pertaining to allocations received by counties is required to be provided to the Legislative Council within 45 days after the end of each calendar year pursuant to Section 57-51-15(6). The report indicated a total of $132,532,965 was received by the 16 counties receiving oil and gas gross production tax distributions in calendar year 2015. The Tax Department sent revenue and expenditure reporting forms to each county that received oil and gas gross production tax distributions. All counties receiving distributions, with the exception of Ward County, responded to the request for information.

The report pertaining to allocations received by school districts is required to be provided to the Legislative Council within 45 days after the end of each fiscal year pursuant to Section 57-51-15(7). The report indicated a total of $32,544,135 was received by the 60 school districts receiving oil and gas gross production tax distributions in fiscal year 2016. Fiscal year 2016 is the first year the reporting requirement has been in place for school districts, and the Tax Department used surveys and worked in cooperation with the Department of Public Instruction to gather the required

information. The Tax Department sent revenue and expenditure reporting forms to each school district that received oil and gas gross production tax distributions. Thirteen school districts did not respond to the request for information.

Committee members expressed frustration that county and school district officials seemed to be disregarding statutory reporting requirements. Committee members contended the reporting requirements were in place for a reason and parties responsible for providing information should take the reporting requirements more seriously. The committee was informed there are no penalties to address instances in which responsible parties fail to provide the required information to the Tax Department.

State Grantor Reports for Incentives

The committee was assigned the responsibility to receive a compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year, pursuant to Section 54-60.1-07. According to the report, a business must enter a business incentive agreement with a grantor before the business may receive an incentive. Business incentive agreements must contain a description of the incentive to be granted as well as the job goals the business seeks to achieve within the first 2 years. A recipient business must report on progress toward achieving stated goals until the goals are met. The report indicated for the period of 2011 through 2015, 748 business incentive accountability agreements were entered, totaling an incentive value of $107,229,806. The report detailed the distribution of business incentives by type, public purpose, and type of business. The report also provided the number of agreements entered per year and identified whether the goal was to create jobs, retain jobs, or neither. Seventy-three percent of projects met stated job creation and retention goals within the first 2 years.

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned five studies:

- A study of the truck permitting systems in oil- and gas-producing counties pursuant to Section 5 of 2015 House Bill No. 1377.
- A study of the truck size and weight provisions under North Dakota Century Code Chapter 39-12 relating to size, width, and height restrictions, in order to ensure the state of North Dakota may harmonize its truck size and weight regulations with the regulations of the states in the Western States Transportation Alliance pursuant to Section 10 of 2015 House Bill No. 1012.
- A study of required motor vehicle insurance pursuant to Section 1 of 2015 House Bill No. 1073. The study included a review of all required motor vehicle insurance limits, specifically limits on no-fault benefits.
- A study of special transportation funding distributions to political subdivisions pursuant to Section 41 of 2015 Senate Bill No. 2015.
- A study of the feasibility of placing the Upper Great Plains Transportation Institute (UGPTI) under the administrative authority of the Department of Transportation (DOT) pursuant to Section 17 of 2015 House Bill No. 1020.

The Legislative Management also assigned the committee the responsibility to receive the following reports:

- A report from DOT regarding information collected from transportation network companies during each biennium, pursuant to Section 39-34-05.
- A report from DOT by June 30, 2016, pursuant to Section 12 of House Bill No. 1012, regarding its study of state funding distributions and allocations to public transportation providers.
- A report from DOT, pursuant to Section 18 of House Bill No. 1012, regarding the department's updated North Dakota state rail plan.

The committee members were Representatives Dan Ruby (Chairman), Bert Anderson, Mike Brandenburg, Ben Hanson, Karen Karls, William E. Kretschmar, Lisa Meier, and Mike Schatz and Senators Robert Erbele, Jerry Klein, Joe Miller, David O'Connell, Dave Oehlke, David S. Rust, and George Sinner

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

UNIFORM TRUCK PERMITTING STUDY

Section 5 of House Bill No. 1377 directed a study of truck permitting systems in oil- and gas-producing counties. The study was to include a review of the North Dakota Association of Oil and Gas Producing Counties' uniform county truck permit program, including the system's integration with the Highway Patrol's online electronic truck permitting and routing system and the communications between county representatives and industry representatives regarding road conditions. The study was to evaluate the appropriateness of additional fees assessed by the board of county commissioners and other local authorities to the oil and gas industry, related to additional road permitting fees and analyze other relevant data regarding uniform truck permitting fees and procedures. The study was to include input from the North Dakota Petroleum Council, the North Dakota Association of Oil and Gas Producing Counties, and other interested persons. Section 6 of the bill placed a moratorium on additional fees for use of county roads to preclude the board of county commissioners and other local authorities having control of roads from imposing any additional fees for the use of county roads, except the fees established in the North Dakota Association of Oil and Gas Producing Counties' uniform county truck permit program, unless an operator, company, or individual requested and agreed to pay the additional fees. However, the board of county commissioners and other local authorities could issue penalties to operators, companies, or individuals who violated posted road restrictions during the 2015-17 biennium.

North Dakota Uniform County Truck Permit System

The committee received information from organizations, including the North Dakota Association of the Oil and Gas Producing Counties, Highway Patrol, North Dakota Petroleum Council, North Dakota Motor Carriers Association, and North Dakota Association of Counties.

The committee learned the North Dakota Uniform County Truck Permit System is a program governed by the Executive Board and Uniform Truck Permit Committee of the North Dakota Association of the Oil and Gas Producing Counties. The committee learned the following 17 counties participate in the permit system--Adams, Billings, Bottineau, Bowman, Burke, Divide, Dunn, Golden Valley, Hettinger, McKenzie, McLean, Mountrail, Renville, Slope, Stark, Ward, and Williams. The committee learned the permit system has been in place since 1984, began as a self-permitting system, which has expanded to an e-permit type system. The North Dakota Association of the Oil and Gas Producing Counties reported that its system currently shares common information with the Highway Patrol's e-permitting system and on the state system a link is available to the Uniform County Truck Permit System. The committee learned permit requesters can also enter the state permit number into its Uniform County Truck Permit System and the common information will be populated from the state permit system. The committee reviewed the following fee schedule:

ND ASSOCIATION OF OIL & GAS PRODUCING COUNTIES

UNIFORM COUNTY PERMIT HEAVY WEIGHT FEE SCHEDULE

Gross Weight	Trucks & Trailers
Under 105,500 but Overwidth or Overlength	20
105,501 - 110,000	30
110,001 - 115,000	40
115,001 - 120,000	50
120,001 - 125,000	60
125,001 - 130,000	70
130,001 - 135,000	80
135,001 - 140,000	90
140,001 - 145,000	100
145,001 - 150,000	110
Over 150,000 (Xcess)	$5 / ton / mile

Workover Rigs & Cranes	
40,000 - 60,000	$30
60,001 - 100,000	40
100,001 - 110,000	60
110,001 - 115,000	70
115,001 - 120,000	80
120,001 - 125,000	90
125,000 - 130,000	100
130,001 - 135,000	110
135,001 - 140,000	120
140,001 - 145,000	130
145,001 - 150,000	140
Over 150,000 (Xcess)	$5 / ton / mile

Earth Moving Equipment (Roaded)	
40,000 - 70,000	$30
70,001 and over	50

Drilling Rig Move Permit - $500 per county per move
May be obtained at ndenergy.org

Revised 3/1/2016

Xcess Load Permit - Over 150,000 lbs GVW

For Xcess Loads (150,000 lbs GVW and heavier) the fee is $5 per ton per mile driven on county (or participating township) roads, on weight over 105,500 lbs.
- Up to 2 business-day waiting period required. Contact Permit Office for more information.

Formula Example:
300,000 lb. GVW - 105,500 = 194,500
194,500 ÷ 2,000 = 97.25 Tons
97.25 Tons X $5.00 = $486.25/mile

Uniform Permits are NOT authority to use county roads if road has been weight restricted by county. See restricted permit information below or contact the Sheriff's Dept. or County Road Superintendent in each county before using any weight-restricted county road.

Restricted Road Permit

To travel overweight on a restricted county road, a company must have a uniform county epermit in their possession, either print-out form or electronic version displayed on a device. The restricted road permit must be an epermit obtained online at ndenergy.org, and approved by the county. The fees are $5/ton/mile over the restricted road maximum weight (gvw) plus $1/ton/mile for each axle over the restricted axle

The committee reviewed the following fees charged within the permitting system:

- Drilling rig move permit cost is $500 into site and $500 out of site (the drilling rig is also subject to oversize and overweight permit fees).
- Xcess permit assesses a ton per mile fee on loads over 150,000 pounds (lbs) gross vehicle weight (GVW) at a rate of $5 per ton per mile over 150,000 lbs GVW.
- Restricted road e-permit for all restricted county roads of members at $5 per ton per mile over the restricted GVW, plus $1 per ton per mile for each axle over the restricted axle weight.
- Per permit maintenance fee of $4.

The Highway Patrol reported that in the past 5 years, the North Dakota e-permitting permits have increased by approximately 50,000 permits per year and 97 percent of all permits are initiated and purchased online, of which 87 percent of the routed oversize or overweight permits are issued without Highway Patrol involvement through the e-permit system for state highways. The current e-permit system can be modified to incorporate county permitting by utilizing the existing infrastructure and the preliminary estimates of the cost to expand the current e-permit system to include county permits is $2.8 million, but the preliminary estimate does not include costs counties may incur. Counties would pay the state for the use of the system and the enhanced system would need to designate fee collections by county. Each e-permit includes a $15 service fee, which is applied to routable permits only, and in fiscal year 2014 the motor carrier electronic permit transaction fund collected $3.4 million in service fees. The motor carrier electronic permit transaction fund is designated for the maintenance and operation of the e-permit system and the majority of the comments from the transportation industry are positive regarding the e-permit system. The Highway Patrol reported it has increased training for the transportation industry to improve e-permit applications and the customers' familiarity with the system.

The committee learned townships and counties are imposing permitting requirements during the freeze/thaw cycle that are beyond the Uniform Truck Permit System developed by the North Dakota Association of the Oil and Gas Producing Counties. There is a lack of consistency among counties which has increased the amount of time companies spend applying for county and township permits. The transportation industry would support a single point access system for permitting and the implementation of a maximum fee for overweight vehicles. The transportation industry's primary concern is the lack of a maximum fee limit in Century Code on county permitting systems.

The North Dakota Association of Counties supported addressing counties' needs for a dynamic overload permit process to meet counties' changing load limits.

Deposit of Overweight Violation Fees

The committee reviewed Section 39-12-14.1 and Section 39-12-20 relating to voluntary settlement of extraordinary road use fee charges and proceeds of sale for overweight violation fees.

Section 39-12-14.1 currently authorizes a peace officer, or a peace officer's designee, to receive the settlement payment for voluntary settlement of extraordinary road use fee charges, which must be deposited in the general fund in the jurisdiction in which the violation occurred and must be used for the support of the road system of that jurisdiction. Under current law, on June 30, 2017, the provisions of this section will also change and the voluntary settlement of extraordinary road use fee charges that did not occur on an interstate or a state highway will be deposited into the state highway fund.

Section 39-12-20 currently provides that the proceeds of sale for a violation that did not occur on an interstate or a state highway in the amount of charges assessed under Section 39-12-17 is appropriated on a continuing basis and must be deposited in the general fund in the jurisdiction in which the violation occurred, and must be used for the support of the road system of that jurisdiction. Under current law, on June 30, 2017, the provisions of this section will also change and the proceeds of the sale for a violation that did not occur on an interstate or a state highway will be deposited into the state highway fund.

The state constitution requires criminal fines for overweight violations to be used for the benefit of common schools, regardless of where the violation occurred, and the sections referenced above only affect the civil penalty associated with the violation. These sections were amended in 2013 Senate Bill No. 2025 to include the current provisions. The fiscal note on the bill indicated a loss of revenue to the state highway fund in the amount of $1.26 million due to this change.

Recommendation

The committee recommends Senate Bill No. 2045 to change the deposit of overweight violation fees allowing the civil portion of the penalty to be deposited with the jurisdiction of the road in which the violation occurred rather than the state highway fund.

TRUCK SIZE AND WEIGHT HARMONIZATION STUDY

Section 10 of House Bill No. 1012 directed a study of the truck size and weight provisions under Chapter 39-12 relating to size, width, and height restrictions, in order to ensure the state of North Dakota may harmonize its truck size and weight regulations with the regulations of the states in the Western States Transportation Alliance. The findings of the study were to be used in collaboration with an UGPTI and DOT study of the impacts to the state of harmonizing truck size and weight regulations with states in the Western States Transportation Alliance. This was in regard to standard commercial truck envelope limits of 129,000 lbs GVW or 100-foot cargo carrying length and potential implications. Section 9 of the bill appropriated $60,000 from the general fund to DOT for a collaborative study with UGPTI for this purpose.

Western States Transportation Alliance

The committee received information from organizations including the Western States Transportation Alliance, UGPTI, and Highway Patrol.

The committee learned the Western States Transportation Alliance is comprised of the following 10 states--Colorado, New Mexico, Utah, Arizona, Oregon, North Dakota, Wyoming, Idaho, Nevada, and Montana. The members entered into an alliance, known as the Multi-State Highway Transportation Agreement, which recommends changes in law or policy with emphasis on compatibility and uniformity of administrative rules or regulations. The Western States Transportation Alliance has a compact to harmonize commercial vehicle weight and size limits for longer combination vehicles with 8 of the 10 members of the alliance, including North Dakota and 6 non-Western States Transportation Alliance states. The committee learned the Intermodal Surface Transportation Efficiency Act of 1991 froze height, width, length, and weight limitations for vehicles on the interstate system. The Act limited interstate gross vehicle weight to 80,000 lbs or up to each states allowable load limit at the time the Act took effect. Congress would need to pass legislation to change current weight restriction imposed on the interstate system to allow 129,000 lbs GVW on the system.

The committee reviewed a comparison of height, width, length, and weight limitations for vehicles in the states of North Dakota, Idaho, Minnesota, South Dakota, Montana, and Canadian provinces of Saskatchewan and Manitoba:

State/Province[1]	Height	Width	Length	State Highway Gross Weight	Interstate Gross Weight[5]
Idaho	14 ft	8 ft 6 in	97 ft	129,000 lbs[2]	105,500 lbs
Minnesota	13 ft 6 in	8 ft 6 in	75 ft	80,000 lbs	80,000 lbs
Montana	14 ft	8 ft 6 in	100 ft	131,600 lbs[3]	131,600 lbs
North Dakota	14 ft	8 ft 6 in	110 ft	105,500 lbs	105,500 lbs
South Dakota	14 ft	8 ft 6 in	100 ft	State bridge formula[4]	129,000 lbs
Manitoba	13 ft 8 in	8 ft 6 in	65 ft 8 in	137,800 lbs	137,800 lbs
Saskatchewan	13 ft 8 in	8 ft 6 in	65 ft 8 in	140,000 lbs	140,000 lbs

[1]All states or providences listed provide special permits for height, width, length, and weight loads that exceed the restrictions listed and allow other exceptions.

[2]Idaho interstate highways are grandfathered up to 105,500 pounds and 129,000 pounds on all state highways, see Idaho section below for further detail.

[3]Montana allows 131,600 pounds provided that any vehicle carrying a divisible load over 80,000 pounds must comply with the federal bridge formula. Select roads allow 137,800 pounds under the Memorandum of Understanding and Cooperation Between the Government of the State of Montana, United States and the Government of the Province of Alberta, Canada, Respecting the Crown Managers' Partnership, subject to federal regulations.

[4]South Dakota allows 80,000 pounds on interstate highways with the exception of grandfathered routes which allow 129,000 pounds and utilizes the state bridge formula for noninterstate highways.

[5]The Intermodal Surface Transportation Efficiency Act of 1991 froze height, width, length, and weight limitations for vehicles on the interstate system. The Act limited interstate gross vehicle weight to 80,000 lbs or up to each states allowable load limit at the time the Act took effect.

Other Studies Regarding Increasing Vehicle Weight Limits to 129,000 Pounds

The committee reviewed the Idaho Transportation Department's 129,000 lbs GVW pilot project, which took place between 1998 and 2013. The committee learned the Idaho Transportation Department studied the effect of increasing the legal truck weights on Idaho state highways for trucks configured to increase GVW from 105,500 lbs to 129,000 lbs over a combined period of 13 years. The Idaho Transportation Department reported it did not observe any significant effect of the 129,000 lbs pilot project trucks on pavements, bridges, or roadway safety. Project participants reported economic benefits associated with this pilot project and in 2013 the Idaho Legislative Assembly passed legislation to increase GVW from 105,500 lbs to 129,000 lbs.

The Upper Great Plains Transportation Institute reported the preliminary findings of its study of the impacts of harmonizing truck size and weight regulations of the states in the Western States Transportation Alliance. The study indicated that as a result of longer vehicles, roadway intersections would be inadequate because of its geometry to accommodate the longer trucks larger turning radius, and improving those intersections could cost $130 million to $306 million statewide. The committee learned shipper costs are estimated to be reduced by $140 million to $285 million annually, and it is expected to reduce overall truck vehicle miles of travel for divisible loads of applicable commodities by 31 to 36 percent. A properly loaded vehicle carrying 129,000 lbs GVW, might have a lower weight per axle than a truck carrying 80,000 lbs GVW, because of the number of axles required to allow it to carry the weight. The report also identified the need to update software, websites, and printed materials at a cost of between $102,000 and $165,000.

State law requires the use of two different methods of calculating the legal load limit which is determined by the road on which the vehicle is traveling, the outer bridge formula, and the inner and outer bridge formula. The outer bridge formula is used when calculating the weight of a truck to determine legal load limits on state highways, and the inner and outer bridge formula is used to determine legal load limits on the interstate. As a result of the different calculation methods, a vehicle may be legal on one road system but over weight on the other.

Weigh Station Bypass Technology

The committee learned the Highway Patrol is in the process of implementing commercial motor vehicle prescreening technology which would allow certain vehicles to bypass weigh stations. The prescreening technology equipment would be installed at no cost to the state and several vendors' technologies would be used to allow the largest number of users of the system. The committee learned Montana, South Dakota, Minnesota, and Canadian provinces currently use the weigh station bypass technology. The Highway Patrol reported it would designate parameters that users of the system would need to meet in order to bypass a weigh station. The third-party systems maintain a database of its customers driving history and utilize that data to designate vehicles by its risk of being in violation. The Highway Patrol reported the system would allow it to better utilize its resources for vehicles that have a high probability of being in violation.

Conclusions

The committee does not make any recommendations as a result of its truck size and weight harmonization study.

REQUIRED MOTOR VEHICLE INSURANCE STUDY

Section 1 of House Bill No. 1073 directed the Legislative Management to study required motor vehicle insurance. The study included a review of all required motor vehicle insurance limits, specifically limits on no-fault benefits.

State Motor Vehicle Insurance Requirements

The state of North Dakota requires motor vehicle insurance for three situations. Minimum limits are mandated by law for each.

- The first situation is in which the insured person injures another person or damages another person's property. A person must purchase liability insurance (Section 39-08-20) to answer for bodily injury or property damage that arises from this situation. Although liability insurance is a specific kind of insurance, the term is commonly used to include all mandatory coverages, including the uninsured motorist, the underinsured motorist, and basic no-fault insurance. In this report the term will be used in the specific sense.
- The second situation is in which another person injures the insured person and does not have any or enough liability insurance to pay for the bodily injury to the insured person. A person must purchase uninsured and underinsured motorist insurance (Section 26.1-40-15.2) to answer for bodily injury that arises from this situation.
- The third situation is in which the insured person is injured and the insured person's insurance pays for economic loss from bodily injury regardless of fault. A person must purchase basic no-fault or personal injury protection insurance (Section 26.1-41-01) to answer for injuries that arise from this situation.

The committee reviewed the following required motor vehicle insurance minimum coverage levels:

- Liability insurance required minimum limits are $25,000 per person and $50,000 per accident for bodily injury and $25,000 per accident for property damage.
- Uninsured and underinsured motorist insurance required minimum limits are $25,000 per person and $50,000 per accident.
- No-fault insurance required minimum limit is $30,000 which allows for income loss reimbursement of up to $150 per week, replacement service payments of up to $15 per day, and death benefits for funeral expenses up to $3,500.

State Motor Vehicle Insurance Testimony

The committee received information from organizations, including the Association of North Dakota Insurers, Professional Insurance Agents of North Dakota, and the Insurance Department.

The committee learned there is no mandatory coverage for property damage done to the insured person by another person who is not insured.

The committee learned an individual's basic no-fault insurance, or personal injury protection, would pay an individual first along with any occupants of the vehicle and if the other motorist is at fault and expenses exceed $2,500, the victim can try to recover costs from the insurance of the motorist at fault through litigation. An individual can use all of the personal injury protection coverage and depending on whether the at-fault motorist is underinsured or uninsured, the individual may be able to recover from the individual's own insurance.

North Dakota is currently one of the lowest premium auto insurance states in the nation and is ranked 45th among the 50 states. The average cost to insure a vehicle in North Dakota is approximately $700 annually. Studies estimate 7 to 15 percent of North Dakota drivers are uninsured. The Association of North Dakota Insurers reported many states have decided no-fault insurance is not necessary because any individual wanting the personal injury protection coverage may purchase it based on each individual's financial situation. Colorado transitioned to an optional program that allows motorists to purchase medical payments coverage ranging from $5,000 to $15,000. The Association of North Dakota Insurers reported if minimum coverages are increased, it will result in increased cost of insurance to consumers and an increase in the minimum coverage could potentially increase the number of uninsured motorists in North Dakota. The Association of North Dakota Insurers does not recommend making any changes to the states existing required motor vehicle insurance coverage.

The committee learned 13 states require personal injury protection and 37 states offer med pay, which only covers medical expenses and excludes work loss and funeral cost compensation. The state requires $30,000 minimum coverage for no-fault insurance and customers can purchase an additional $80,000 of coverage for a total of $110,000 of no-fault coverage. The Professional Insurance Agents of North Dakota does not recommend any change to required motor vehicle insurance because individuals have the option to purchase additional coverage.

The Insurance Department indicated, based on the department's analysis, the premium attributable to personal injury protection coverage is approximately 7 percent of the total auto insurance premium. The estimate is based on the top 20 insurance carriers which accounted for nearly 80 percent of the market in 2014.

Committee Discussion and Conclusions

Members of the committee expressed concern that increasing the minimum required amount of motor vehicle insurance could potentially result in more uninsured motorists, and may not improve overall coverage. The committee does not make any recommendations to change existing required motor vehicle insurance coverages.

SPECIAL TRANSPORTATION FUNDING DISTRIBUTIONS TO POLITICAL SUBDIVISIONS STUDY

Section 41 of Senate Bill No. 2015 directed the Legislative Management to study special transportation funding distributions to political subdivisions. The study included a review of the distribution methods including the feasibility and desirability of using UGPTI needs studies, county major collector miles, or a combination of both, if there are future special transportation funding distributions to political subdivisions. The study was to review options to ensure counties are reporting information consistently. The study was to consider methods to ensure that road projects in each county are properly coordinated with state road projects and projects in adjacent counties. The study was to review the use of special transportation funding in comparison to the Legislative Assembly's intent.

Study Analysis

The committee studied the various components identified in the study directives and received information from organizations, including UGPTI; DOT; the North Dakota Association of Counties; and the counties of Burleigh, Emmons, Kidder, McLean, Oliver, and Sheridan.

Distribution Method

County Major Collector Miles

The county major collector system is a network of county roads, which has been identified by the county, and approved by DOT and the Federal Highway Administration. The county major collector system serves as a network of county roads in the collector network typically connecting with state highways. This network is sometimes called the farm-to-market system. Any route designated to be on the county major collector system must be functionally classified as a major collector. Reasonable changes can be made to this system if a route is a major collector and the proposed change fits logically into the existing county network. County major collector miles are added and removed at the request of each county through DOT. and the department reviews the request, and if it is approved, it is submitted to the Federal Highway Administration for final approval or denial. The state has approximately 10,800 county major collector miles.

Upper Great Plains Transportation Institute Infrastructure Needs

The committee learned the November 2014 *Infrastructure Needs: North Dakota's County, Township and Tribal Roads and Bridges: 2015-2034* final report is the third in a series of studies. The study process began with data collection, which included oil, agricultural production, and manufacturing assumptions collected from various federal and state agencies. The Upper Great Plains Transportation Institute also conducted a survey of counties and townships in order to determine unpaved road needs throughout the state and pavement and traffic data were collected with the assistance of DOT, to identify current pavement, bridge and traffic conditions, and updated the 2011-13 traffic models that were developed for the 2011-13 study. An estimate of future road and bridge needs was developed based on the data collected.

Distribution Method History

The 2011 Legislative Assembly provided $225 million for special transportation distributions to political subdivisions as follows:

- House Bill No. 1012 provided $60 million from the general fund to oil-producing and non-oil-producing counties which were allocated to counties and cities based on the certificates of title of vehicles registered by residents of the county and townships that received allocations based on its share of roads compared to the length of all township roads in the state.
- House Bill No. 1012 provided $142 million from the general fund to DOT to rehabilitate or reconstruct county and township paved and unpaved roads. The funding was allocated based on the needs assessment study conducted by UGPTI, titled *Additional Road Investments Needed to Support Oil and Gas Production and Distribution in North Dakota*, dated December 9, 2010.
- Senate Bill No. 2371 provided $23 million from the general fund for distributions to political subdivisions in non-oil-producing counties. $6.8 million of the funding was distributed to non-oil-producing counties and cities pursuant to Section 54-27-19(4), $1.7 million was distributed to counties and townships in non-oil-producing counties pursuant to Section 54-27-19.1, and $14.5 million was distributed to counties and townships in non-oil-producing counties through a distribution of $10,000 to each organized township and a distribution of $10,000 for each unorganized township to the county in which the unorganized township is located.

The 2013 Legislative Assembly provided $388.76 million for special transportation distributions to political subdivisions:

- House Bill No. 1358 provided $160 million from the general fund for distributions to oil-producing counties. The allocations to counties were made by DOT based on data supplied by UGPTI.
- House Bill No. 1358 provided $120 million from the general fund for distributions to counties. The allocations to counties were based on county major collector miles for each eligible county. The Department of Transportation was authorized to use data supplied by UGPTI in determining the projects to receive funding.
- House Bill No. 1358 provided $8.76 million from the general fund for allocations to benefit townships in oil-producing counties. The funding was distributed to counties and townships in oil-producing counties through a distribution of $15,000 to each organized township and a distribution of $15,000 for each unorganized township to the county in which the unorganized township is located.

The 2015 Legislative Assembly provided $464 million for special transportation distributions to political subdivisions, of which $224 million is for distributions to non-oil-producing counties and $240 million are for distributions to oil-producing counties:

- House Bill No. 1176 provided $112 million from the general fund for distributions to non-oil-producing counties. The bill required that one-half of the distributions must be based on county major collector roadway miles as defined by DOT. The distribution to each non-oil-producing county based on county major collector roadway miles must be proportional to each non-oil-producing county's total county major collector roadway miles relative to the combined total of county major collector roadway miles of all the eligible non-oil-producing counties as defined by the bill. The remaining one-half of the distributions must be based on the most recent data compiled by UGPTI regarding North Dakota's county, township, and tribal road and bridge infrastructure needs. The distribution to each non-oil-producing county based on total estimated road and bridge investment needs must be proportional to each eligible non-oil-producing county's total estimated road and bridge investment needs for the years 2015 to 2034 identified by UGPTI relative to the combined total estimated road and bridge investment needs for the years 2015 to 2034 identified by UGPTI of all the eligible non-oil-producing counties.
- Senate Bill No. 2103 provided $352 million from the strategic investment and improvements fund for special transportation distributions to political subdivisions, of which $112 million for distributions to non-oil-producing counties and $240 million to oil-producing counties. The $112 million for non-oil-producing counties was distributed to each non-oil-producing county based on county major collector roadway miles. The $240 million for oil-producing counties was distributed to each oil-producing county proportional to each oil-producing county's total estimated road and bridge investment needs for the years 2015 to 2034, identified by UGPTI relative to the combined total estimated road and bridge investment needs for the years 2015 to 2034.

Upper Great Plains Transportation Institute Transportation Needs Study

The Upper Great Plains Transportation Institute reported it is improving its request for information from counties in order to obtain and provide more comparable information between counties, because there had been some differences in reporting gravel costs and other maintenance costs. The information received from the counties is reported as specifically as possible on its transportation needs and each counties needs are based on each counties method for

maintenance, repairs, and replacement in order to present an accurate statewide total of transportation needs. The Upper Great Plains Transportation Institute reported it is working to expand its bridge analysis to include structures which are less than 20 feet in length, because a significant number of bridges are less than 20 feet in length. The committee learned the Federal Highway Administration defines a bridge as being 20 feet or more in length for the National Bridge Inventory and all other bridges or culverts are considered minor structures and complete data is not available on the minor structures. The Upper Great Plains Transportation Institute reported it is attempting to capture some of the maintenance and repair costs of culverts in the normalized maintenance costs.

Use of Funds and County Annual Transportation Reports

The committee received information from a number of counties on their use of special transportation funding provided by the Legislative Assembly. Counties utilized the special transportation funding to improved paved roads by building a roundabout and repaving, improving unpaved roads by adding additional gravel, replacing small bridges with box culverts, raising the grade of a county major collector road, and increasing GVW limit from 80,000 lbs to 105,500 lbs on certain roadways.

The committee reviewed required annual transportation funding reports submitted to the Tax Department by each county in order to determine if the reports could be used to analyze each county's use of special transportation funding in comparison to the county's needs. The report was designed from a federal questionnaire required for DOT and the reported information is often not consistent among counties. The report is at times not being submitted in a timely manner to the Tax Department because the county may not have enough personnel to help complete the report and there is no penalty for failure to submit the report or submit the report on time. The Tax Department reported it does not utilize the report and it only has the responsibility to receive the reports when submitted. The committee learned through testimony from several counties that there is some difficulty in filing the report because the information counties have available is being reported in a manner that is different from its normal reporting process.

Uniform County Financial Reporting

The committee learned that among the state's 53 counties, at least 8 different software platforms are used for maintaining financial records, and at least 10 have transitioned to new software in the last 5 years. The North Dakota Association of Counties reported that from the data available, it is impossible to link expenditures to the specific property taxes, intergovernmental revenues, and charges for services used to support them, but the current data allows the association to review trends.

Department of Transportation Report on Special Transportation Allocations

All 53 counties have submitted approved projects for the counties' allocations provided in Senate Bill No. 2103 and 33 of the 43 eligible counties have submitted approved projects for the counties' allocations provided in House Bill No. 1176. The committee learned funding from Senate Bill No. 2103 could only be used for route connectivity or routes connecting a major state highway to a major county route and funding from House Bill No. 1176 could only be used for roads which connect major traffic generators or areas needing improved safety and could not be used for maintenance. The Department of Transportation reported it considers an improvement to a road of three inches of gravel or more, and that type of improvement is eligible for funding from House Bill No. 1176. Funding made available specifically for townships during the 2015 legislative session allowed the townships to utilize the funds for maintenance or improvements.

Committee Discussion and Conclusions

Several committee members expressed concern regarding limiting the method by which special transportation funding distributions are determined. Each Legislative Assembly should have the flexibility to determine the appropriate method to distribute funding to assist counties, cities, and townships meet their road and bridge needs. The committee does not make any recommendations regarding the special transportation funding distributions to political subdivisions study.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE CHANGE OF ADMINISTRATIVE AUTHORITY STUDY

Section 17 of House Bill No. 1020 directed the Legislative Management to study the feasibility of placing UGPTI under the administrative authority of DOT. The study was to identify potential efficiencies, potential issues, and current services or benefits provided to UGPTI by North Dakota State University (NDSU).

History of the Upper Great Plains Transportation Institute

The Upper Great Plains Transportation Institute was created by the Legislative Assembly in 1967 to foster a better understanding of transportation's role in the economy. Chapter 54-53 established UGPTI to be administered by and in conjunction with the NDSU of Agriculture and Applied Science and this chapter establishes a transportation council to serve in an advisory capacity. The President and administration of the NDSU of Agriculture and Applied Science are responsible for the selection of personnel for and the administration of the institute.

Upper Great Plains Transportation Institute and North Dakota State University

The Upper Great Plains Transportation Institute was appropriated $23,022,756 in House Bill No. 1020, of which $4,847,099 was from the general fund. The Upper Great Plains Transportation Institute is under the administrative authority of NDSU, and it is located on NDSU's campus, which provides approximately 11,392 square feet of office space at no cost to UGPTI, along with critical grant support services and matching funds for federal grants. The Upper Great Plains Transportation Institute and DOT have separate missions, but they do collaborate with research, technical assistance, and training and UGPTI and DOT have an annual strategic meeting. The Upper Great Plains Transportation Institute receives the majority of its funding from federal funding and averages $10 million per biennium in federal funds. The Upper Great Plains Transportation Institute received state funding of $4.8 million for the 2015-17 biennium, which included one-time funding of $750,000. The Department of Transportation reported it has not identified any efficiencies or benefits that would be gained by changing the administrative authority for UGPTI from NDSU to DOT and because administrative authority is with NDSU, UGPTI has more access to federal grants.

Testimony

The committee received information from organizations, including UGPTI, NDSU, DOT, the Associated General Contractors North Dakota, the North Dakota Association of Counties, the American Council of Engineering Companies, the North Dakota Motor Carriers Association, the North Dakota Township Officers Association, and the Public Service Commission.

All information received by the committee supported the administrative authority for UGPTI remaining with NDSU.

Recommendations

The committee recommends the administrative authority of UGPTI remain with NDSU.

OTHER REPORTS RECEIVED

The committee was assigned the responsibility to receive the following reports:

- A report from DOT regarding information collected from transportation network companies during each biennium, pursuant to Section 39-34-05.
- A report from DOT by June 30, 2016, pursuant to Section 12 of House Bill No. 1012, regarding its study of state funding distributions and allocations to public transportation providers.
- A report from DOT, pursuant to Section 18 of House Bill No. 1012, regarding the department's updated North Dakota state rail plan.

Report from the Department of Transportation on Information Collected on Transportation Network Companies

In 2015 House Bill No. 1144, the Legislative Assembly created Chapter 39-34, relating to transportation company networks, which requires transportation network companies to register with the state; requires passengers to be notified of fees before services are rendered; establishes transportation driver requirements; limits disclosure of personally identifiable information of passengers; sets reporting requirements for transportation network companies and DOT; and restricts political subdivisions from imposing taxes, rate restrictions, entry, operational, or other requirements on transportation network companies.

Section 39-34-04 requires transportation network companies to report the following information to DOT:

- A list of political subdivisions in which the transportation network company operates;
- The number of accidents that were reported to the transportation network company during the passenger on-board stage; and
- The number and types of traffic violations and other violations that were reported to the transportation network company during the passenger on-board stage.

Section 39-34-04 also requires DOT to report the information collected from the transportation network companies to the Legislative Management.

A transportation network company as defined in Section 26.1-40.1-01, means a person operating in this state which enables prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with independent participating drivers using a personal vehicle. An example of a transportation network company is Uber.

The Department of Transportation reported the following in July 2016:

- Political subdivisions in which a transportation network company operates:

  Fargo;

  West Fargo;

  Prairie Rose;

  Frontier;

  Mapleton; and

  Reile's Acres.

- The number of accidents that were reported to the transportation network company during the passenger on-board stage--two; and
- The number and types of traffic violations and any other violations that were reported to the transportation network company during the passenger on-board stage--zero.

DEPARTMENT OF TRANSPORTATION REPORTS

Study of State Funding Distributions and Allocations to Public Transportation Providers

Section 12 of House Bill No. 1012 required DOT to study state funding distributions and allocations to public transportation providers. The study was to include a review of distributions and allocations; a review of distribution and allocation formulas; and the public transportation providers use of the funds received from the distributions, allocations, and contingent funding, including uses for operating costs and capital asset purchases. The Department of Transportation was required to report to the committee regarding the results of its study by June 30, 2016.

The Department of Transportation reported 34 public transportation providers are operating statewide, including rural, urban, tribal, and intercity services. The department reported during the 2011-13 and 2013-15 bienniums, approximately $40.3 million was distributed to transit providers ($19.5 million of state funding and $20.8 million of federal funding). The department reported $34.7 million of the funding provided was used for operating costs and the remaining $5.6 million was used for capital purchases.

North Dakota State Rail Plan

Section 18 of House Bill No. 1012 required DOT to report to the committee regarding the department's updated North Dakota state rail plan. The bill also required the department to post the updated document to the department's website, and to make the document available to the Legislative Council so that an electronic copy could be posted on the legislative branch public website.

The Department of Transportation reported the North Dakota state rail plan consists of a partnership with the Public Service Commission, Department of Commerce, Department of Emergency Services, North Dakota Pipeline Authority, and UGPTI. The intent of the state rail plan is to provide guidance for the rail systems and services utilized by North Dakota passengers and freight shippers. The committee learned WSP Parsons Brinckerhoff was contracted as the consultant to assist with developing the plan. The committee learned the Public Service Commission hired a track inspector who previously worked with the Burlington Northern Santa Fe Railway and the inspector trained with the chief track inspector of the Federal Railroad Administration and has the same authority as a federal railroad inspector. The state rail plan is currently in phase two of a three-phase process and the study has established the current rail system baseline and is in the process of collecting input from stakeholders and the public along with identifying the state's rail needs and opportunities. Phase three will focus on providing recommendations for the state rail system to address the identified needs and opportunities in alignment with the established vision, goals, and objectives.

Department of Transportation Budget Update

The committee received information from DOT's 2015-17 biennium budget, including changes due to the Governor's 4.05 percent general fund budget allotment and the additional 2.50 percent budget allotment, changes in projected revenues into the highway tax distribution fund, and the effect of the changes made during the 2016 special legislative session. The Department of Transportation received a total general fund appropriation of $656.4 million for the 2015-17 biennium.

The Department of Transportation reported the February 2016 4.05 percent general fund budget allotment ordered by the Governor reduced the department's general fund appropriations by $26.6 million and the subsequent August 2016 2.50 percent general fund budget allotment reduced the department's general fund appropriations by an additional $16.4 million. These allotment amounts were approved by the Legislative Assembly during the August 2016 special legislative session. The committee learned the department's February 2016 revised highway fund revenue forecast

projected a 13 percent decrease from the original 2015-17 biennium projection due primarily to reduced fuel tax collections. The department reported the nation is experiencing declining revenue from gas and diesel taxes because of the increase in the efficiency of vehicles and a reduction in travel. The committee learned other states have increased user fees to offset the decline in usage. The department reported Minnesota imposes a gasoline tax of 28.6 cents per gallon, Montana imposes 27.7 cents per gallon, and South Dakota imposes 30 cents per gallon. The national average is 28.2 cents per gallon and North Dakota imposes 23 cents per gallon. The department reported the annual amount generated from a one-cent gas tax has decreased from $8.7 million per year in 2015 to $7.6 million per year in 2016, and the department is projecting an annual amount of $7.4 million per year for the 2017-19 biennium. The committee learned the highway tax distribution funding to counties has declined from $70.3 million in fiscal year 2015 to $60.1 million in 2016 and allocations to cities have declined from $40 million in fiscal year 2015 to $34 million in 2016. The department reported it anticipates $20.9 million in additional federal funding in the August redistribution of federal funding for transportation projects for a total of $261.7 million during federal fiscal year 2016.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Road Needs Assessment

The committee received UGPTI's *Infrastructure Needs: North Dakota's County, Township and Tribal Roads and Bridges: 2017-2036* draft. The study determined overall ride and pavement ratings on local roads are improving, county participation in transportation studies has improved, pavements are thicker, unit costs are lower than in the last study with no differential between oil-producing counties and non-oil-producing counties, gravel costs have increased, paving costs have decreased, and the conditions of bridges has not changed overall. The institute reported the study has improved the focus on uniform reporting, especially relating to county gravel costs and maintenance costs. The committee learned counties and other gravel users have been transporting gravel further, indicating the supply of gravel in each county's area may not be sufficient. The committee learned DOT and county officials coordinate bridge inspections and determine the status of each bridge on a scale of 1 to 100 and when a bridge receives a rating of 80, it is at a point of rehabilitation and at a rating of 50, the bridge is recommended for replacement.

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23 established the Tribal and State Relations Committee. The committee is composed of a chairman designated by the Chairman of the Legislative Management; three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives; and three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate. Section 54-35-23 directs the committee to conduct joint meetings with the North Dakota Tribal Governments' Task Force to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee is to meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Management.

The North Dakota Tribal Governments' Task Force is composed of six members--the Executive Director of the Indian Affairs Commission, or the Executive Director's designee; the Chairman of the Standing Rock Sioux Tribe, or the Chairman's designee; the Chairman of the Spirit Lake Tribe, or the Chairman's designee; the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the Chairman's designee; the Chairman of the Turtle Mountain Band of Chippewa Indians, or the Chairman's designee; and the Chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the Chairman's designee.

In addition to the committee's statutory responsibilities, the Legislative Management assigned to the committee responsibility:

- Pursuant to House Concurrent Resolution No. 3006, to study the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts; and
- Under Section 57-51.2-04, to receive a report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation.

Members of the North Dakota Tribal Governments' Task Force were Scott J. Davis, Executive Director, Indian Affairs Commission; Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Bruce Renville, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and Myra Pearson, Chairman, Spirit Lake Tribe.

Committee members were Representatives Marvin E. Nelson (Chairman), Bill Amerman, Dennis Johnson, and Wayne Trottier and Senators Joan Heckaman, Oley Larsen, and Dave Oehlke.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

FEDERAL INDIAN LAW AND POLICY

Indian law is a very complex area of law. Due to the sovereign character of Indian tribes, most Indian law is necessarily federal in nature. Under the federal system, there have been several distinct eras of federal-tribal relations.

During the initial era of federal-tribal relations, 1789 to approximately 1820--known as the nonintercourse era--the federal government sought to minimize friction between non-Indians and Indians by limiting the contacts between these groups. This era was followed by the Indian removal era--approximately 1820 to 1850--when the federal government sought to limit friction between non-Indians and Indians by removing all Indians from east of the Mississippi River to open land in the Oklahoma Territory. This era was followed by what may be called the reservation era--1850 to 1887--when, as non-Indians continued to move westward and friction developed between non-Indians and Indians, the federal government developed a policy of restricting Indian tribes to specified reservations. This policy was implemented by treaty in which each tribe ceded much of the land it occupied to the United States and reserved a smaller portion to it. This is the origin of the term reservation.

With the enactment of the General Allotment Act of 1887, or Dawes Act, United States-Indian relations entered a new era. This era is known as the allotment era because the General Allotment Act authorized the President to allot portions of reservation land to individual Indians. Under this system, allotments of 160 acres were made to each head of a family and 80 acres to others, with double those amounts to be allotted if the land was suitable only for grazing. The General Allotment Act resulted in a decline in the total amount of Indian-held land from 138 million acres in 1887 to 48 million acres in 1934.

The allotment era was followed by the Indian reorganization era--1934 to 1953--during which the land base of the tribes was protected by extending indefinitely the trust period for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. The Indian reorganization era was followed by the termination and relocation era--1953 to 1968--when the federal government sought to terminate tribes that were believed to be prosperous enough to become part of the American mainstream, terminate the trust responsibility of the federal government, and encourage the physical relocation of Indians from reservations to seek work in large urban centers.

The policy of termination and relocation was regarded as a failure, and the modern tribal self-determination era began with the Indian Civil Rights Act of 1968. The effect of this Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Indian Civil Rights Act of 1968 also amended Public Law 280 so states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. There have been a number of federal Acts since 1968 designed to enhance tribal self-determination. These include the Indian Financing Act of 1974, which established a revolving loan fund to aid in the development of Indian resources; the Indian Self-Determination and Education Assistance Act of 1975, which authorized the Secretaries of the Interior and of Health, Education, and Welfare to enter contracts under which the tribes would assume responsibility for the administration of federal Indian programs; the Indian Tribal Government Tax Status Act of 1982, which accorded the tribes many of the federal tax advantages enjoyed by states, including that of issuing tax-exempt bonds to finance governmental projects; the Tribally Controlled Schools Act of 1988, which provided grants for tribes to operate their own tribal schools; the Indian Child Welfare Act of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

STATE-TRIBAL RELATIONS

Probably the most important concept in state-tribal relations is the concept of sovereignty. The states and Indian tribes are sovereigns in the federal system. In *Johnson v. McIntosh*, 21 U.S. 543 (1823), the United States Supreme Court stated "[t]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil. . .but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." In *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), the Supreme Court held that the Cherokees could not be regarded as a foreign state within the meaning of Article III of the Constitution, so as to bring them within the federal judicial power and permit them to maintain an action in the Supreme Court. However, Chief Justice John Marshall characterized Indian tribes as "domestic dependent nations." In *Worcester v. Georgia*, 31 U.S. 515 (1832), the Supreme Court further discussed the status of Indian tribes. The Court stated "[t]he Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed. . ." The Court concluded the laws of Georgia have no force in Cherokee territory. Based upon these early cases, the tribes are sovereign and free from state intrusion on their sovereignty. Thus, state laws generally have been held inapplicable within the boundaries of reservations, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter 54-40.2 provides for agreements between public agencies and tribal governments. As used in this chapter, public agency means any political subdivision, including a municipality, county, school district, and any agency or department of North Dakota. Tribal government means the officially recognized government of an Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. Section 54-40.2-02 provides any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. Section 54-40.2-03.1 provides after the parties to an agreement have agreed to its contents, the public agency involved is required to publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement.

Section 54-40.2-03.2 provides if the public agency involved receives a request pursuant to Section 54-40.2-03.1, the public agency is required to hold a public hearing, before submitting the agreement to the Governor, at which any person interested in the agreement may be heard. Section 54-40.2-04 provides as a condition precedent to an agreement made under Chapter 54-40.2 becoming effective, the agreement must have the approval of the Governor and the governing body of the tribes involved. If the agreement so provides, it may be submitted to the federal Secretary of the Interior for approval.

Section 54-40.2-05 provides within 10 days after a declaration of approval by the Governor and following approval of the agreement by the tribe or tribes affected by the agreement and before commencement of its performance, the agreement must be filed with the federal Secretary of the Interior, the clerk of court of each county where the principal office of one of the parties is located, the Secretary of State, and the affected tribal government.

Section 54-40.2-05.1 provides upon the request of a political subdivision or any tribe affected by an approved agreement, the Indian Affairs Commission must make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement.

Section 54-40.2-06 provides an agreement made pursuant to Chapter 54-40.2 must include provisions for revocation. Section 54-40.2-08 enumerates specific limitations on agreements between public agencies and Indian tribes. Finally, Section 54-40.2-09 provides Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

2015 LEGISLATION AFFECTING TRIBES

House Bill No. 1068 required the Industrial Commission to give due consideration to the effect of rules, orders, and policies on locations under federal or tribal jurisdiction and provide sufficient information to indicate the effect of including these locations. The bill required the Industrial Commission to allow access by the tribal government to the geographic information system database for pipelines located within the exterior boundary of the Fort Berthold Reservation.

House Bill No. 1129 expanded the allowable uses of grant funds awarded to tribally controlled community colleges. The bill provided funds may be used for the enhancement of existing programs that assist students in obtaining certificates or degrees in workforce areas high in demand.

House Bill No. 1406 authorized the Governor to enter a state-tribal sales, use, and gross receipts tax agreement with the Standing Rock Sioux Tribe. The bill outlines the parameters for an agreement including provisions relating to the rate of tax imposed, conforming tribal taxes to the state sales tax base, allocation of revenues, authority for the Tax Commissioner to administer and collect the tax and allowances for the provision of these services, authority for the Tax Commissioner to offset future distributions to the tribe in the case of an overpayment, and the proper venue for resolving any disputes arising from an agreement.

House Bill No. 1476 provided for a restructuring of oil extraction tax rates and exemptions. The bill provided current law regarding tax rates and the application of triggered incentives will remain in effect through December 31, 2015, subject to two exceptions:

- Beginning December 1, 2015, if triggered rate exemptions are in effect, a 24-month exemption from the oil extraction tax will no longer be available for wells drilled and completed a horizontal well; and
- Oil produced from new wells, drilled and completed after April 21, 1987, will no longer be eligible for a reduced tax rate of 4 percent, but will instead be taxed at the full rate of 6.5 percent. The remaining term of all other rate reductions or exemptions eliminated by the bill may not be carried forward past December 31, 2015.

Beginning on January 1, 2016, the rate of extraction tax on all oil was reduced from 6.5 to 5 percent. This rate is subject to change depending on the average price of a barrel of crude oil. If the average price of a barrel of crude oil exceeds the trigger price of $90 for 3 consecutive months, the rate will increase to 6 percent on all oil extracted. The rate will remain at 6 percent until the average price of a barrel of crude oil falls below the trigger price of $90 for 3 consecutive months, at which time the rate will revert to 5 percent on all oil extracted. The bill eliminated several oil extraction tax exemptions.

Production that will continue to be subject to a reduced oil extraction tax rate after December 31, 2015, includes production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation.

Senate Bill No. 2064 required an affidavit prepared by the administrative county, or an agency or tribal council of an Indian reservation, to be submitted along with the petition to request continuing foster care services for a child between the ages of 18 and 21. The bill also required a continued foster care agreement for a child between the ages of 18 and 21 be willfully entered between the child, the foster care provider, and the Department of Human Services or the tribal council of an Indian reservation.

Senate Bill No. 2226 required legislative confirmation of agreements approved by the Governor and the governing bodies of the tribes involved if the agreement is a tax collection agreement. The bill required agreements between the Tax Commissioner and one or more tribes also receive confirmation by a majority of the members of the House of Representatives and the Senate; provided the agreement does not become effective until its legislative confirmation date, or its effective date, whichever is later, and must expire not more than 16 years after its effective date; and provided the agreement must be filed with the specified parties after approval by the Governor, the tribe or tribes affected by the agreement, and if required, legislative confirmation.

TRIBAL YOUTH STUDY

Background

The federal criminal justice system in the United States for tribal youth has undergone few changes since the 1930s. The National Indian Child Welfare Association reports tribal youth are frequently placed in adult facilities because many of their communities lack dedicated juvenile facilities. Tribal youth also deal with an inconsistent law enforcement, court, and corrections system that is mostly the result of the evolution of tribal justice systems under the influence of treaties and federal laws. Culturally, most Native American tribes do not approach juvenile delinquency from the same perspective as America's Western European-based norms. This often creates issues for youth who move between the reservation and the community and do not fully understand the standards of conduct expected of them off the reservation. This increases the tribal youth's risk for run-ins with the juvenile justice system. Native American culture historically did not use confinement as a criminal punishment. Most tribal court systems rely on restitution, community service, mental health treatment and counseling, and probation to answer juvenile crimes, so confinement tends to be off the reservation.

In both the federal and tribal systems, there is a lack of facilities, programs, and services to address the needs of tribal youth. Facilities for housing juveniles sentenced to detention in the federal system are limited and are often located far from the juvenile's home and family. Community-based treatment programs available to these youths are also very limited and are rarely located on or near a juvenile's reservation. Furthermore, these programs may not take into account the beliefs and traditions of the youth's culture.

North Dakota Juvenile Justice System

North Dakota has a two-tiered system in which services are provided by the juvenile court, a division of the state's judicial system; and by the Division of Juvenile Services, a division of the Department of Corrections and Rehabilitation, an executive branch agency.

The North Dakota juvenile justice system is largely defined through the role of the juvenile court under Chapter 27-20, known as the Uniform Juvenile Court Act. The Uniform Juvenile Court Act established the juvenile court as a division of the district court. The juvenile court has exclusive and original jurisdiction over any child who is alleged to be deprived, delinquent, or unruly. In North Dakota, youth ages 7 up to age 18 who are alleged to have committed a delinquent or unruly act fall under the jurisdiction of the juvenile court.

Generally, the juvenile offenders who commit more serious crimes or who are chronically involved in delinquent behavior are placed with the Division of Juvenile Services. Juveniles with less serious offenses are supervised in juvenile court either formally before a judicial officer or informally with a juvenile court officer. Whether a juvenile is with the Division of Juvenile Services or the juvenile court the philosophy of case management is the same--a continuum of care with comprehensive case management.

The Division of Juvenile Services operates eight regional offices in eight cities across the state providing services to all counties in the state. The Division of Juvenile Services does not provide direct services to the juvenile tribal courts. The juvenile court essentially provides the same services for juveniles except the services are provided within the community.

Testimony and Committee Considerations

In its study of the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts, the committee received testimony and information from a district judge, the Director of the Division of Juvenile Services, a tribal judge, a tribal prosecutor, tribal council members, and tribal members.

The committee learned from the testimony that a great disparity exists between the state courts and the tribal courts in the level of services available to youth who are adjudicated in each court. In the Human Services Region III--which includes Ramsey, Benson, Towner, Rolette, Cavalier, and Eddy Counties--along with the Turtle Mountain Band of Chippewa Indians and Spirit Lake Sioux Tribe Reservations, there are no adolescent psychiatric beds, no substance abuse treatment beds, no safe beds for heightened, but not imminent-risk adolescents, no detox units, and no detention for delinquency. It was noted Human Services Region III has none of these services even though:

- The region has 6 percent of the state's population, but has 38 percent of all temporary assistance to needy families (TANF) cases;
- The region has 7 percent of the state's youth population, but comprises 41 percent of all state youth who are on TANF;
- Thirty-six percent of children ages 0 through 17 in the region live in poverty and another 15 percent live near the poverty level;
- The only counties in the state which have more actual people living in poverty than Rolette County are Cass and Ward Counties; and
- Sixty-five percent of the total births in this region are to unmarried women compared to the statewide rate of 32 percent.

The information indicated when dealing with juveniles in the state system, the goal is to be able to offer the services necessary to keep the juveniles out of juvenile court. Juvenile supervisors and juvenile probation officers try to keep youth out of court by using diversion programs. For those juveniles who become involved in the juvenile court system, the North Dakota Youth Correctional Center is an option. At the center, a juvenile has access to treatment, counseling, and educational programing.

When a tribal youth commits delinquent acts, the tribal judge does not have the same options as the juvenile court judge. Tribal judges do not have access to the Division of Juvenile Services or the Youth Correctional Center. In the tribal system the infrastructure does not exist to provide options other than detention. In most cases, that detention is for a long period of time and is far from the tribal youth's home. In the state system the effort is always made to return the youth to the youth's family, an option not available to tribal youth.

Testimony from a tribal prosecutor indicated as a result of the lack of treatment, education, counseling, and other services, tribal youth adjudicated in tribal court have a much higher rate of recidivism than youth adjudicated in the state system.

The committee reviewed a tribal-state agreement from Utah under which a tribal youth who commits a delinquent act can be sent to a state youth correctional center for services. Under the Utah system, the state provides services to delinquent tribal youth without cost to the tribe.

Testimony from a representative of the Division of Juvenile Services indicated the Youth Correctional Center and several of the tribes have entered informal agreements for the provision of services, both detention and longer term correctional placement, at various times over the years. The agreements allowed for the case-by-case analysis and placement of tribal youth at the Youth Correctional Center. It was noted in Chapter 54-40.2, which outlines the process for creating agreements between public agencies and Indian tribes, gives the Department of Corrections and Rehabilitation the authority to enter a memorandum of understanding to provide state services to juvenile youth.

During the course of the discussion of the need to provide services to tribal youth, the committee considered a bill draft to establish a pilot program to provide state services to juveniles adjudicated in tribal court. The bill draft would direct the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws. Testimony in support of the bill draft indicated although the option for the state and the tribes to collaborate is available without legislation, no action has been taken. The testimony suggested legislation is needed to get the process started.

Testimony from tribal representatives in support of the bill draft indicated the bill draft would formalize a process that would be in the best interest of tribal youth. The testimony noted a bill draft would be a positive step forward in repairing the relationship between the state and the tribes and would aid in a closer government-to-government understanding.

Recommendation

The committee recommends Senate Bill No. 2046 to establish a pilot program for providing state services to juveniles adjudicated in tribal court. The bill directs the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws.

TRIBAL-STATE TAX AGREEMENTS

Tax Collection Agreements with Tribal Governments

The committee received information throughout the interim regarding state and tribal tax agreements. The agreements must comply with the following three requirements:

- To ensure uniformity between state law and tribal code, the tribal code or ordinance must be substantially similar to the state law;
- The Tax Department must administer the tax for the tribes; and
- The state must retain a small administration fee.

The committee was informed the cigarette and other tobacco products and the motor and special fuels tax collection agreements with the Standing Rock Sioux Tribe were renegotiated and became effective May 1, 2015. The renegotiated agreements changed the revenue distribution from 75 percent to the tribe and 25 percent to the state to an 87/13 percent split and to reduce the administration fee from 3 to 1 percent.

A representative of the Tax Department reported on the status of the motor fuel and special fuel tax collection agreements with the tribal governments. These agreements provide for the single administration of the collection and distribution of motor fuel taxes on behalf of the state and tribes for fuel sales within the boundaries of the reservation. The tax rates for motor fuel sales are consistent both on and off the reservation. The distribution of the tax is based on the official United States census of Native Americans who are enrolled tribal members. The state also has had motor fuel and special fuel tax collection agreements with the Standing Rock Sioux Tribe since 1999, the Spirit Lake Sioux Tribe since 2006, the Three Affiliated Tribes of the Fort Berthold Reservation since 2007, and the Turtle Mountain Band of Chippewa Indians since 2010. The report indicated the motor fuel and special fuel tax collection agreement with the Standing Rock Sioux Tribe also is in the final stages of renegotiation.

Tribal members of the committee expressed concerns regarding 2015 Senate Bill No. 2226, which requires legislative confirmation of agreements approved by the Governor and the governing bodies of the tribes involved if the agreement is a tax collection agreement. The bill requires agreements between the Tax Commissioner and one or more tribes to be confirmed by a majority of the members of the House of Representatives and the Senate. According to the tribal members, the legislation puts tribal-state tax collection agreements on a 2-year cycle with the tribes being required to wait until the next legislative session for agreements to become effective. It was noted the tribes need the ability to work with the executive branch and to be able to negotiate in the interim.

Sales and Use Tax Collection Agreement

The committee received information regarding the status of the tribal-state sales and use tax agreement with the Standing Rock Sioux Tribe, which was authorized by 2015 House Bill No. 1406. The agreement, which was scheduled to become effective July 2016, provides for an 80/20 tribal/state split. According to testimony; however, the Standing Rock Sioux Tribe opted to give a use tax exemption to the tribe's casino. It was noted the casino profits are used to fund elderly and nutrition programs and to pay tribal debt. Because the state gives use tax exemptions for institutions, such as the Bank of North Dakota, it was contended the Standing Rock Sioux Tribe is authorized to exempt the casino. Testimony from representatives of the Tax Department indicated state law requires, as a condition of entering a tribal-state tax collection agreement, both governments to have the same sales and use tax laws. According to the testimony, an exemption exists for tribal entities, but not for tribally owned businesses. For the tax agreement to become effective, both the state and the tribe would have to change their laws to allow for an exemption for a tribally owned business. Representatives of the Tax Department indicated support for moving forward with the implementation of the agreement; however, the use tax issue for the casino must be resolved before that can happen.

Oil and Gas Tax Agreement with the Three Affiliated Tribes of the Fort Berthold Reservation Report

A representative of the Tax Department presented a report on the status of the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation.

In the year leading up to the 2013 legislative session, the tribe's council and other representatives continued to seek a revised tax agreement. The discussion resulted in inclusion of amendments to 2013 House Bill No. 1198, which revised the statutory authorization for the state's tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation. The most significant change was a substantial increase in the tribal share of oil and gas taxes under the requirement that the allocation of oil and gas production and extraction taxes on nontrust land under a revised agreement must be 50 percent for the state and 50 percent for the tribe. The revised tax agreement that included the provisions of the new law was signed by the Governor and the tribal Chairman on June 21, 2013, and went into effect on July 1, 2013.

The 2015 Legislative Assembly enacted House Bill No. 1476, which removed some price-based incentives in exchange for a lower rate. It was reported the position of the Three Affiliated Tribes of the Fort Berthold Reservation was that no formal action would be taken on the oil and tax agreement while efforts with the Governor's office to renegotiate the agreement at the new rate continue. As of the writing of this report, an agreement on a renegotiated agreement had not been reached.

INDIAN EDUCATION ISSUES

Department of Public Instruction

The committee received reports from representatives of the Department of Public Instruction throughout the interim on the status of Indian education issues. The reports included information on planning, strategies, programs, and implementation of Indian education policy and program initiatives.

According to the reports, the North Dakota Native American Essential Understandings Project, a curriculum project regarding the culture, history, language, practice, and lifestyles of the Native Americans in the state was completed and has received approval from the Superintendent of Public Instruction. As of the writing of this report, the project had entered phase 2, which includes the creation of lesson plans and elder interviews. The report indicated phase 3, which is the implementation of 40 to 50 lesson plans, will include professional development and the use of trainers in the schools to implement the lesson plans. Upon completion, the essential understandings curriculum will be available for use by all teachers in the state.

Representatives of the Department of Public Instruction provided reports throughout the interim regarding the state plan for the federal Every Student Succeeds Act, an education plan that includes several provisions that target the educational needs of Native American students. The Act, which promotes tribal self-determination in the education of tribal students by authorizing coordination and collaboration of tribal stakeholders with state education agencies to meet the unique culturally related academic needs of the tribal students, requires each state to engage in meaningful consultation with tribes in the development of the state's plan to meet the needs of tribal students. According to the report, information gathered in the tribal consultations will be included in the state plan scheduled for submission in March 2017. The Act is scheduled to become effective on July 1, 2017.

The committee received testimony expressing concern over the difficultly of the General Education Development (GED) examination for Native American students. In January 2014 a new GED series was released. The new GED series of four exams is computer-based and tests on four content area competencies and critical thinking skills rather than the previous rote memorization. According to testimony from the Department of Public Instruction regarding the new GED results, the statewide pass rate is 83 percent compared to the national rate of 67 percent. Reservation GED programs have a pass rate of 81 percent, just 2 percent less than the statewide rate. Other information provided when comparing Native American students to non-Native American students in the state indicated:

- Native American students take approximately 28 percent more time to achieve the same educational gains;
- Native American students have a younger drop out age and preassessment testing shows Native American students to be almost 2.5 grade levels less their same-age peers;
- Issues that affect Native American more than non-Native American students are attendance and retention; and
- Most Native American students take longer to acquire the GED.

It was noted the adult learning centers have excellent and caring staff, strong professional development, and motivated students. It was concluded the department is generally pleased with the progress being made and will work to continue to improve the quality of adult instruction in the state.

Tribal College Grant Program and Research Activities

The committee received reports throughout the interim regarding the status of the workforce development grants to tribally controlled community colleges in the state. The tribal college grant program began in 2013 with the enactment of Senate Bill No. 2218, which is codified as Chapter 54-60.2. That legislation provided for the appropriation of $5 million to the state's five tribal colleges for creation or enhancement of programs and course of study to prepare students for the state's high-demand job opportunities. Grant awards for the 2013-15 biennium were made August 1, 2013, December 1, 2013, and June 1, 2014.

The 2015 Legislative Assembly approved a $3 million appropriation to continue the funding of the workforce development grants to tribally controlled community colleges program. In addition 2015 House Bill No. 1129 amended Section 54-60.2-02 to expand the allowable uses of grant funds awarded to tribally controlled community colleges. The bill provided funds could be used for the enhancement of existing programs that assist students in obtaining certificates or degrees in workforce areas high in demand.

The committee received regular reports from representatives of the tribal colleges regarding activities, issues, and accomplishments as a result of the grants. The representatives reported the grant funds are being used to purchase additional training equipment, hire additional instructors, reduce the length of programs, and launch new programs. Some of the high-demand programs for which the grant funds are being used include welding, commercial driver's license, heavy equipment operator, electrical technology, oilfield operations, medical coding, entrepreneurship, and law enforcement training. The representatives reported increases in enrollment, faculty, graduates, recruitment, and placement as a result of the grant funds. One tribal college reported the grants allowed the college to hire six employees--a commercial driver's license instructor, a welding instructor, a machinist instructor, an oil field operations instructor, a career navigator, and a tribal college grant director. As of June 30, 2016, the tribal college reported 352 students had enrolled in seven different training programs, 122 had graduated, and 64 had been placed in positions that averaged $20.12 per hour.

Tribal college representatives expressed concerns regarding the sustainability of the tribal college programs if the state does not continue to fund the grant program. The testimony noted if the tribal grant program would continue for at least 3 more years, it will give tribal colleges the time and funding needed to build programs.

The committee also received testimony from representatives of Sitting Bull College and United Tribes Technical College regarding research activities underway at each college. A representative of Sitting Bull College provided information and demonstrations on the college's master of science degree program through which two students are studying mercury and lead concentrations in river sediments. A representative of the United Tribes Technical College provided information and demonstrations regarding the college's research activities in the areas of ecological research, antimicrobial activities of cultivated versus wild purple coneflowers, breeding squash for sustainable food systems, retrospective ecological risk assessment of a 2015 brine spill, and behavioral health research.

TRIBAL HEALTH AND HUMAN SERVICES ISSUES

Medicaid and Medicaid Expansion

Under 2013 House Bill No. 1362, the Department of Human Services was directed to expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act to individuals under 65 years of age with income below 138 percent of the federal poverty level, based on modified adjusted gross income. The committee received testimony that an estimated 20,500 individuals were eligible for the Medicaid coverage that began on January 1, 2014. As of July 2015 the Medicaid Expansion enrollment was approximately 18,833 individuals. The enrollment data indicated 77 percent of enrollees are childless adults with over half of this group aged 19 to 44. It was noted the Department of Human Services initially was unable to report the ethnic and racial makeup of the Medicaid Expansion population, because the contingency eligibility system did not capture that information, but the department would be able to provide that data after the system was fully operational. The department, the Indian Affairs Commission, and the tribes continue to actively collaborate to ensure eligible American Indians were aware of the expanded coverage and were being encouraged to apply.

The committee received a report from a representative of the Department of Human Services regarding the level of Medicaid funding for tribal members. According to the report, on February 26, 2016, the Centers for Medicare and Medicaid Services issued policy guidance on federal funding for services received through an Indian Health Service tribal facility and furnished to Medicaid-eligible American Indians and Alaska Natives. The policy guidance indicated Indian Health Service tribal facilities may enter care coordination agreements with non-Indian Health Service tribal providers to furnish certain services for patients who are American Indian or Alaskan Native Medicaid beneficiaries and the amounts paid by the state for services requested by facility practitioners in accordance with those agreements would be eligible for the enhanced federal matching at a rate of 100 percent. The representative of the department indicated the federal approval of South Dakota's agreement provides North Dakota with an approved agreement as a model for drafting our state's agreement.

Tribal Dental Services

The committee received information regarding a dental health aide therapist program in Alaska and whether a similar program would be helpful in resolving the shortage of dental professionals in North Dakota's tribal communities. According to the testimony, a comprehensive study of the implementation of dental health aide therapists found dental health aide therapists were providing safe, appropriate, and competent care. According to the information, the cost-effectiveness studies of including dental health aide therapists in the dental team have shown the dental health aide therapists can provide as many billable services as a dentist, yet they are paid about half the salary of a dentist. The

available evaluations and evidence suggest the mid-level dental providers like the Alaska dental health aide therapists deliver safe, competent, and appropriate oral health care. Alaska's dental health aide therapy program, which operates under a federal program, was opposed by the Alaska dental licensing board. It was noted a tribe can institute a dental health aide therapy program without approval from the state or the North Dakota Board of Dental Examiners; however, the tribe cannot access Indian Health Service funds unless the state and the state licensing authority approve the program.

Child Support

The committee received information from a representative of the Child Support Enforcement Division of the Department of Human Services regarding several child support issues affecting tribal families. Tribal families are a significant component of the caseload for the state's child support program. Tribal child support cases handled by the state child support enforcement unit are usually the result of a referral from TANF or an application from one of the parents. A child support case also may be opened by the state if the child is in foster care or at the request of another state or tribal child support enforcement program. For sovereignty reasons, the jurisdictional issues in child support cases involving tribal families can be very complicated. Some cases only can move forward in tribal court, such as paternity cases for tribal children who were conceived and born on a reservation. In other cases, it is less clear whether tribal or state court is most appropriate, particularly if one or both of the parents now lives off the reservation. It was reported the total caseload for the state's child support enforcement program as of November 2015 was 38,194, with 1,628 of those cases unable to move forward for jurisdictional reasons. It was noted this number is at a historically low level.

The Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation operate federally funded child support programs and therefore do not use the services of the Child Support Enforcement Division. For North Dakota tribes that do not have a child support enforcement program, the Department of Human Services' attorneys appear in tribal court to establish and enforce tribal support orders according to tribal law.

Testimony from a representative of the Child Support Enforcement Division also addressed concerns regarding the suspension of a state-issued driver's license for failure to pay child support. According to the testimony, the state uses this tool carefully and selectively since making it more difficult for an obligor to get to work would be counterproductive. Under the law, a license may be suspended if the obligor is at least 2 months or $2,000 in arrears, whichever is less. It was noted in practice; however, it would be highly unusual for the Child Support Enforcement Division to suspend a license if an obligor were making regular payments, even if the obligor owes past-due child support. According to the testimony, the goal of the license suspension process is to discourage obligors from missing a payment and to encourage obligors to avoid suspension by working and making regular payments to current and past-due child support.

Task Force on Substance Exposed Newborns

The committee received a report on the findings and recommendations of the Task Force on Substance Exposed Newborns. Pursuant to 2015 Senate Bill No. 2367, a Task Force on Substance Exposed Newborns was formed for the purpose of researching the impact of substance abuse and neonatal withdrawal syndrome, evaluating effective strategies for treatment and prevention, and providing policy recommendations. The task force included representatives from state agencies, the Legislative Assembly, medical providers, nonprofit entities focused on children's health and well-being, Indian tribes, law enforcement, and the foster care community.

Across the country, the number of babies born with prescription and illegal drugs in their systems has been growing. These babies are exposed to alcohol or drugs during gestation and become dependent on the drug or alcohol. When these babies are born and the exposure to those substances ends, the babies experience neonatal abstinence syndrome, also known as neonatal withdrawal syndrome, which causes a range of symptoms such as seizures, excessive crying, tremors, gastrointestinal distress, fever, irritability, poor feeding, and breathing and sleeping problems. In addition the babies often grow up with special long-term medical and educational needs.

The findings and recommendations of the task force were summarized as follows:

- Addiction and drug abuse during pregnancy should be treated as a health issue since research shows universal criminalization has been ineffective.
- Due to data gaps, the North Dakota state epidemiological outcomes workgroup should determine the best means and methods for developing short- and long-term data on the incidence and cost of neonatal withdrawal syndrome/neonatal abstinence syndrome.
- The State Department of Health should explore mechanisms for recording data on the number of newborns born exposed to substances, the substances to which they are exposed, and the number diagnosed with neonatal withdrawal syndrome/neonatal abstinence syndrome.
- Medical professionals should follow the current laws for testing, referring, followup, and reporting pregnant women who are abusing alcohol or using controlled substances and for reporting substance exposed newborns.

- State's attorneys and behavioral health professionals should evaluate the pros and cons of having an affirmative defense of periodic drug testing and consent to home visits in cases in which criminal child abuse and neglect stems from a parent or caregiver's substance abuse.

Tribal State Health Services Committee

The committee received testimony regarding the regarding the activities of the North Dakota Tribal State Health Services Committee. According to the testimony, the North Dakota Tribal State Health Services Committee was formed several years ago for the purpose of consultation on Medicaid program updates and changes. Since that time, the committee has evolved into participating in broader discussions covering all areas of human services. Those who attend the committee meetings include tribal health directors, tribal council members, representatives of Indian Health Service, members of the Great Plains Tribal Chairman's Heath Board, representatives of the Indian Affairs Commission, representatives of the State Department of Health, representatives of tribal community health programs, and representatives of the North Dakota State University master of public health program. The testimony indicated group-identified priorities include Department of Human Services website information and updates, single point of entry and no wrong door, prevention, substance use disorder treatment, hands-on training for third-party billing, more communication between tribes, and engaging members of the group in other efforts. It was noted the committee emphasizes communication and planning as key and that all tribal members are invited to attend the meetings.

SUPREME COURT COMMITTEE UPDATE

The committee received updates from representatives of the Committee on Tribal and State Court Affairs. The Committee on Tribal and State Court Affairs was established in 1994 by North Dakota Supreme Court Administrative Rule 37 after a study group of state and tribal judges concluded the resolution of some issues was not occurring because of the lack of communication between tribal and state courts. Several examples of issues discussed by this court committee include the handling of tribal court judgments in the state court system and the establishment of a court procedure for tribal arrest warrants. Other issues recently addressed by the court committee include access to state juvenile services by tribal jurisdictions; access to state jury lists for tribal court proceedings; the Indian Child Welfare Act; and the compilation of tribal codes, ordinances, and rules.

The Committee on Tribal and State Court Affairs continues to work on the Indian Child Welfare Act audit. It was noted as a result of the Indian Child Welfare Act audit, efforts are being made to get qualified expert witnesses for foster care and adoptive proceedings that involve Native American children. According to the testimony, the Committee on Tribal and State Court Affairs has been effective at maintaining a chain of communication between tribal and state courts.

PALEONTOLOGY PROGRAM

A representative of the paleontology program of the Standing Rock Institute of Natural History provided the committee with information regarding the program. The Standing Rock Institute of Natural History began as the Standing Rock Paleontology Program in 2007. The Standing Rock Paleontology Program was the first among both federally recognized and nonfederally recognized tribes in the country to establish a paleontology program to regulate and manage its fossil resources by a written set of laws or code. Out of this program, the Standing Rock Institute of Natural History became recognized through a grant received by the Administration for Native Americans in October 2014. According to the representative, the Standing Rock Institute's Museum of Natural History was expected to open in June 2016. The museum will exhibit fossils from the region, including a juvenile Tyrannosaurus Rex, a dig site and interactive exhibits, as well as a working laboratory where visitors can watch fossil experts at work sandblasting fossils collected from the field.

According to the testimony, the Standing Rock Institute of Natural History also plans to develop an outreach program that will involve area schools, encourage outlying schools to visit the museum, and bring tourists and business to the area. The outreach program also plans to develop an accredited field camp program for undergraduate students around the region. The testimony noted the paleontology program has a number of dig sites in Sioux County, one of which contains a 27-foot dinosaur that was discovered in June 2015. The testimony indicated more funding is needed to provide security for the sites to prevent looting.

TRIBAL RECRUITING AND RETENTION

The committee received testimony from the Adjutant General regarding efforts to improve communication and collaboration with the tribal population in the state. According to the testimony, the North Dakota National Guard is not meeting its goals with respect to the percentage of the Native American population who are in the National Guard. Native Americans make up about 5.4 percent of the state's population, but only 2.8 percent of the National Guard membership. The National Guard is evaluating its recruiting process and looking internally to make sure it is providing an inclusive culture that allows the Native American members to reach their potential. Although a number of National Guard units exist near reservations, there are not any units on reservations. It was noted when an informal tribal leader joins the National Guard others tend to join too. The National Guard is reviewing its marketing materials to ensure the materials promote the National Guard to all populations in the state.

STATE FIRE MARSHAL

The state fire marshal provided information to the committee regarding state fire services. The services provided by the State Fire Marshal's office include conducting fire inspections of public buildings, approving plans for new or remodeled schools, conducting inspections of ground fuel storage tanks, conducting fire investigations, and collecting fire department fire reports and civilian and fire service fatality reports. According to the State Fire Marshal, efforts are underway to work together with local and tribal authorities to train personnel in fire prevention and investigation techniques and procedures and to develop a memorandum of understanding with tribal, state, and local authorities to form fire investigation task forces.

ANIMAL CRUELTY LAWS AND VETERINARY SERVICES

A representative of the Human Society of the United States testified before the committee on the topics of North Dakota's animal cruelty laws and the availability of veterinary care field clinics on Native American reservations. According to the testimony, the state's animal laws with respect to neglect, abuse, cruelty, and abandonment, which are contained in Chapter 36-21.1, are adequate but the public is not aware of the laws or how to report abuse. It was noted more education is needed to create that awareness. The testimony also included information on the availability of rural area veterinary services programs that provide high-quality preventative health care and spay/neuter services to approximately 8,000 animals in remote communities throughout the United States and in other countries. According to the testimony, the domestic-based teams work primarily on Native American reservations throughout the western United States. The rural veterinary program, which has four full-time veterinarians, brings 50 to 60 veterinary students to the state each summer to provide direct-care veterinary field clinics to the reservations. From 2005 through 2014, the program provided surgeries for 4,389 animals and medication and vaccinations for 7,890 animals on reservations in the state. It was noted the clinics were again scheduled at all reservations in 2016.

CLEAN POWER PLAN

The committee received information from a representative of the State Department of Health regarding the public outreach and state strategy for the federal Environmental Protection Agency's Clean Power Plan (40 CFR 60, Subpart UUUU). In accordance with the federal rule, the state is required to detail how reductions of carbon dioxide emissions from existing fossil fuel-fired power plants will be achieved. The rule includes both state and federally enforceable requirements on the power plant operators to reduce carbon dioxide emissions. It was noted the tribes are not required to reduce emissions because the state's tribes do not own any power plants; however, the tribes will be affected by the higher energy prices that may occur as a result of the cost of reducing carbon dioxide emissions. As of the writing of this report, the United States Supreme Court had stayed the federal rule pending the completion of court challenges. It also was noted a new Congress and President in 2017 may impact the status of the plan as well.

The State Department of Health reported an estimated 1,500 people attended public outreach meetings held in Williston, Beulah, Bismarck, and Fargo. The general issues raised by the public included regional and statewide economic impacts, the cost of implementation, the remaining useful life of facilities, legal remedies, the option to request a plan development time extension, and the needed involvement of the Public Service Commission.

WATER TOPICS OVERVIEW COMMITTEE

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management during each interim to appoint a Water Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees and to designate a chairman. The committee must meet quarterly and is to operate according to the statutes and procedures governing the operation of other Legislative Management interim committees. This section originally created the Garrison Diversion Overview Committee in 1981 but was amended in 2009 to create the Water-Related Topics Overview Committee. The name was changed to its current form in 2013.

Section 54-35-02.7 provides the committee is responsible for:

1. Legislative overview of water topics and related matters;
2. The Garrison Diversion Project; and
3. Any necessary discussions with adjacent states on water topics.

In addition, the committee may meet with the State Water Commission and must:

1. Work collaboratively with the State Water Commission;
2. Report on the committee's project prioritization process;
3. Provide updates on allocated program expenditures; and
4. Report on the fund balances of projects, grants, and contracts.

The committee was assigned three studies in addition to its statutory responsibilities. Section 22 of 2015 Senate Bill No. 2020 required a study of the options available for providing a sustainable water supply to central and eastern North Dakota. Section 4 of 2015 House Bill No. 1095 required a study of the use of quick take eminent domain by water resource districts and provided the study must include input from stakeholders, including the State Water Commission, water resource districts, and landowners. House Concurrent Resolution No. 3020 (2015) directed a study of the impact on owners of land that has been inundated by the rising waters in Devils Lake and Stump Lake.

The committee was assigned the responsibility to receive five reports:

- Section 14 of Senate Bill No. 2020 required the Garrison Diversion Conservancy District to report its progress in planning and designing the Red River Valley Water Supply Project.
- Section 18 of Senate Bill No. 2020 required the State Water Commission to report regarding funding transfers approved by the Budget Section.
- Section 25 of Senate Bill No. 2020 required the State Water Commission to report every 6 months during the biennium regarding any changes made to the State Water Commission priority projects list from the one presented last session.
- Section 26 of Senate Bill No. 2020 required the FM Area Diversion Authority Board to report twice each year on congressional authorization of the diversion project and the status of the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and the project budget. The MnDak Upstream Coalition is required to report on the impacts of the Fargo flood control project and mitigation efforts, alternatives, and costs.
- Section 27 of Senate Bill No. 2020 required the independent water providers and the Western Area Water Supply Authority (WAWSA) to report regularly and collaborate with the committee and the State Water Commission to monitor water usage, rates, engineering contract procedures, and market share.

Committee members were Representatives Jim Schmidt (Chairman), Bill Amerman, Dick Anderson, Tom Kading, Naomi Muscha, Jon O. Nelson, Marvin E. Nelson, Todd Porter, Mark Sanford, Roscoe Streyle, Greg Westlind, and Denton Zubke and Senators Ronald Sorvaag, Jonathan Casper, Ray Holmberg, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, George Sinner, and Jessica Unruh. Representative Curt Hofstad was a committee member until his death on June 18, 2016.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

GARRISON DIVERSION CONSERVANCY DISTRICT AND RED RIVER VALLEY WATER SUPPLY PROJECT

Background

Research suggests a strong possibility of a drought in the Red River Valley area within the next 5 decades. As the population in that area grows, the impact of such a drought would be even greater than the impact of droughts in prior years. The Red River Valley Water Supply Project (RRVWSP) was authorized by the Dakota Water Resources Act of 2000 to address this concern and provide a solution to the water supply and quality problems in the Red River Basin. That legislation also called for $200 million of federal appropriations for the project. The Garrison Diversion Conservancy District, on behalf of the state, and the United States Bureau of Reclamation, on behalf of the federal government, executed a memorandum of understanding to begin studying these issues in 2000.

After years of work, the United States Bureau of Reclamation issued a draft environmental impact statement for the project in December 2005. The draft included analyses of eight alternative plans for accomplishing the objectives of the project. After additional information was obtained, a revised draft environmental impact statement was released in January 2007. In the revised draft, both parties identified the Garrison Diversion Unit import to the Sheyenne River as the preferred alternative for bringing a reliable supply of quality drinking water to the Red River Valley area. This alternative includes the installation of a pipeline from Washburn to the Red River Valley area through the Sheyenne River north of Lake Ashtabula, which will act as a regulating reservoir. From there, water will be released into the Sheyenne River and flow into the Red River supplying water systems in the Red River Valley with a reliable supply of drinking water. This plan will provide flexibility for future expansion so water can be conducted to residents in central North Dakota as well. In December 2007 the United States Bureau of Reclamation issued the final environmental impact statement for the project. It includes responses to public comments received on the prior iterations of the document, a final biological assessment prepared in compliance with the federal Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature.

After due consideration and evaluation of technical, hydrologic, and design aspects, and water permitting and environmental impacts, the state and the United States Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative. However, the federal government has not approved the project to date. As a result, it is now a state and local project, and the Garrison Diversion Conservancy District is the lead state entity on the project.

Testimony and Committee Deliberation

The committee has reviewed the status of the RRVWSP for each interim since the 2009-10 interim. During the 2015-16 interim, the committee was informed the state is moving forward on the project without federal funds, and the project must rely on a source of water with no federal nexus. The RRVWSP sponsor entities studied six options for the project, and the committee received information about the study results. The committee was informed the RRVWSP sponsor entities selected the option that will carry water from Washburn to the eastern part of the state. The committee received information about multiple options for the water treatment plant location, water turnout locations, and water treatment processes. The water carried by the pipeline likely will discharge into the Sheyenne River or Bald Hill Creek, and there likely will be minimal water treatment because meeting drinking water standards is costly. The project will use horizontal collector wells above the ordinary high-water mark of the Missouri River near Washburn to avoid a federal nexus to the water supply. The number of horizontal collector wells to be built will depend on the volume of water to be transported.

The committee received information about the cost and difficulty of transporting water over the continental divide. The anticipated cost of the project has grown and exceeded the amount appropriated for the current biennium. The design phase alone is projected to cost $50 million, and the Garrison Diversion Conservancy District selected an engineering firm to provide design and engineering work for the project. A representative of the Garrison Diversion Conservancy District informed the committee the project cost was originally split 90/10 between the State Water Commission and the Lake Agassiz Water Authority approximately 5 years ago and the project is proceeding under the assumption there will continue to be a 90/10 cost-share with the State Water Commission. The cost-share is not mandated in legislation, and some committee members expressed concern about the state bearing 90 percent of the costs for a project the state is not managing. Options being considered for the 10 percent local share include increased water rates, special assessments, and increased sales taxes.

The committee received information regarding the potential risk of interstate litigation over the RRVWSP. Garrison Diversion Conservancy District representatives informed the committee any litigation over the RRVWSP is likely to differ from the litigation over the Northwest Area Water Supply Project (NAWSP) because the NAWSP litigation centers around that project's federal nexus and alleged noncompliance with the National Environmental Policy Act, which will not apply to the RRVWSP. The testimony also indicated post-design work on the RRVWSP must begin as soon as possible to ensure the project can rely on the current requirements for its Nationwide Permit 12 and to allow the project to be

grandfathered under the federal Water of the United States rules if those rules go into effect. To meet the legal definition of "starting" work for permitting purposes, the project needs $20 million, and the project could be completed by early 2019 if the Legislative Assembly approves the necessary funding.

COLLABORATION WITH THE STATE WATER COMMISSION

The State Water Commission was created in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately $500,000 to $2,000,000 being appropriated per biennium. This changed with creation of the resources trust fund in 1981. When the resources trust fund was created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project--the first state water project. During this period, the scope of projects increased dramatically as the Southwest Pipeline Project was a $100 million project. At present, there are three projects owned by the state of North Dakota--NAWSP, the Southwest Pipeline Project, and the Devils Lake Outlet Project.

The State Water Commission is required by Sections 61-01-26 and 61-02-14 to develop and maintain a comprehensive water plan for the sound management of North Dakota's water resources. The most recent comprehensive plan was completed in 1999. Since then, the state water management plan has been updated with supplements every biennium with water development reports published prior to legislative sessions.

The committee met twice with the State Water Commission during the 2015-16 interim, once in November 2015 and once in September 2016. During the joint meetings, the committee and commission expressed hope for continued collaboration and cooperation on water topics that affect North Dakota residents. The committee and the commission received updates and reports on multiple issues; received information on a variety of water projects around the state; and discussed future joint meetings, project prioritization, funding, the committee's concerns about carryover, cost-share policies, and accountability of project sponsors. The committee also received project funding updates from the State Water Commission and discussed the status of projects and the operation of purpose funding at each meeting.

Purpose Funding

A key topic of discussion for the State Water Commission and the committee is the use of purpose funding. For the 2015-17 biennium, the Legislative Assembly appropriated funding for the State Water Commission in categories, or "buckets," that correlate to various purposes, including flood control, floodway property acquisitions, state water supply, general water management, Devils Lake, and a revolving loan fund. The committee received frequent project summaries from the State Water Commission to monitor the distribution of funds within each category. The committee discussed the ability of the State Water Commission to seek flexibility from the Budget Section in the allocation of funds from one purpose to the other when necessary, and expressed support for the continuing use of purpose funding.

Prioritization

Representatives of the State Water Commission provided the committee information regarding the process the State Water Commission uses to prioritize projects for funding. The State Water Commission designates projects as low, medium, or high prioritization. The testimony indicated the commission does not prioritize any project in a city that is not growing at 3 percent or more per year. The committee generally expressed its support for legislative appropriations based upon purpose funding and for the State Water Commission to continue using its prioritization process.

Cost-Share Policy

The committee was informed the State Water Commission met in September 2015 to make changes to the commission's cost-share policy as directed by Senate Bill No. 2020. As a result of the changes, crop damages are eligible for cost-sharing. Also, water supply projects are eligible for up to 75 percent cost-share from the state, and pre-engineering costs are capped at 35 percent cost-share from the state. During the 2015-17 biennium, all rural water projects were approved at a 75 percent cost-share. Once a project is approved, the State Water Commission reimburses costs as submitted by the project sponsor. According to the report, the State Water Commission acts on applications as the applications are received.

WATER PROJECTS FUNDING REVIEW

The committee received a report regarding the total project cost, the completion dates, and sources of revenue for 15 water projects receiving funds from the State Water Commission. The projects selected for review were the projects with the most funding approved, excluding large flood-related projects. The projects reviewed included the Upper Maple River Dam construction, the Michigan spillway, the Horace diversion channel site A, the Jackson Township improvement district No. 1, the Pontiac Township improvement district No. 73, the City of Underwood floodwater outlet, the 2014 flood protection system modifications for Pembina, the Tri-County drain reconstruction, the Harmon Lake Recreational Facility, the Puppy Dog Coulee Flood Control Phase 1 2009 diversion ditch construction, the flood control levee recertification in Mapleton, the Sheyenne River diversion low flow channel phases 3 and 4 improvement reconstruction, the Red River Basin distributed detention plan study, the Haas Coulee drain, and the design and repair of Big Coulee Dam.

CENTRAL AND EASTERN DAKOTA WATER SUPPLY

The committee was required to study the options available for providing a sustainable water supply to central and eastern North Dakota. In addition, the State Water Commission was directed to conduct a study of the feasibility and desirability of a central Dakota water supply project to supplement the committee's work. The study included a financial analysis as well as a detailed business plan for the project, including projected operational costs and projected water supply needs for the area to be served. Section 19 of Senate Bill No. 2020 designated $70 million for a water reuse facility and the Central Dakota Water Supply Project, contingent on the State Water Commission entering an agreement that a fertilizer or chemical processing facility be constructed in Stutsman County. Of that amount, $10 million was designated as a grant and $40 million as a loan for a water reuse facility. The remaining $20 million was designated for the Central Dakota Water Supply Project.

CHS, Inc., planned to build the requisite fertilizer plant in Stutsman County. However, in August 2015, the committee was informed CHS, Inc., decided not to build in the county. A representative of CHS, Inc., informed committee members water supply in the area was not a factor in the decision, rather, the risk profile for the plant was too high. As a result of the decision regarding the fertilizer plant, the $70 million appropriated for the Central Dakota Water Supply Project, which was contingent on the plant's construction, became uncommitted funds. The committee noted the State Water Commission could use the funds as any other uncommitted funds.

QUICK TAKE EMINENT DOMAIN

Background

Quick take allows a public entity using eminent domain to immediately take private property after depositing a dollar amount of an offer to the landowner with the district court. This differs from traditional eminent domain in which a public entity does not acquire ownership rights until a price for those rights has been negotiated or determined through litigation. Under Section 61-16.1-09(2), water resource districts have authority to use quick take to acquire rights-of-way for projects for which federal or state funds have been appropriated.

During the 2015 legislative session, House Bill No. 1095 was amended to insert a condition precedent for a water resource district to use quick take. Limiting language was passed in Section 33 of 2015 Senate Bill No. 2015, which was the Office of Management and Budget appropriations bill. The language would have required that state funds must be appropriated by the Legislative Assembly for a specific project as a condition precedent for a water resource board to use quick take. The Governor's veto message stated the Governor vetoed this section of the bill because the section created confusion by not defining "specific project," a term he argued was open to a wide range of interpretations. The veto message pointed out the study of this issue "should provide the clear direction as to what policy changes, if any, are needed."

Testimony and Committee Considerations

The committee received written and verbal testimony regarding the exercise of quick take eminent domain by water resource districts. Some representatives of water resource districts expressed concern that project costs and timelines would increase if quick take were no longer available. They contended traditional eminent domain gives a landowner the ability to delay a project because work may have to stop if a water resource district and a landowner cannot agree on a price for the right of way at issue. Under quick take, a water resource district may take ownership of the right of way when there is a dispute over price and continue work on the project using the right of way while litigation over the price is ongoing. Representatives of water resource districts testified there is no evidence water resource districts have abused the authority to use quick take. In response, committee members noted water projects typically require a long time for planning and construction, and questioned why water resource districts did not begin price negotiations for rights of way earlier in projects to avoid possible delays rather than resorting to quick take.

The committee received testimony from landowners expressing concern about the lack of leverage landowners have in negotiating a price for a right of way after a water resource district takes ownership of the right of way. In addition, landowners indicated representatives of water resource districts would not negotiate before taking ownership of a right of way. The committee also was informed some water resource districts may use blanket easements. Blanket easements do not describe the right of way with particularity and can significantly encumber titles.

The committee was informed the Cass County Joint Water Resource Board had plans to exercise quick take eminent domain authority to acquire rights of way in Richland County for the FM Area Diversion Project. Although there has been no definitive case on the issue of a water resource board using eminent domain to acquire property outside the territory of the water resource district, the plain language of Section 61-16.1-09(12) appears to indicate it is permissible. The operative language states water resource districts have the authority to "[a]cquire by lease, purchase, gift, condemnation, or other lawful means . . . real and personal property and easements and rights of way within or without the limits of the district . . . " This language has remained unchanged for decades and applied to the predecessors of water resource districts. There is no legislative history to reveal the Legislative Assembly's intent behind this language when the provision was enacted.

The committee considered three bill drafts to limit the use of quick take eminent domain by a water resource district. One bill draft would have eliminated the authority of water resource districts to use quick take. Another bill draft would have required a water resource district to obtain the approval of the board of county commissioners of the county in which a right of way is located before using quick take to acquire the right of way. The third bill draft set forth a specific negotiation process a water resource district would have to follow before acquiring ownership of a right of way using quick take. That bill draft also would require the chairman of the water resource board to file an affidavit with the court in the county in which the right of way is located which confirms the water resource district complied with the negotiation process. The negotiation process would include multiple written communications from the water resource district to the landowner with specific wait periods between the communications. A water resource district would be required to send the communications by certified mail or another method that requires a signed receipt. The bill draft would allow a landowner up to 75 days to negotiate a price for the right of way at issue or engage legal counsel to identify options for challenging the condemnation.

The committee considered options to address situations in which a landowner refuses to sign receipts for communications from a water resource district, including allowing a water resource district to rely on a landowner's constructive notice of the required communications.

Committee Recommendation

The committee recommended Senate Bill No. 2047 to require a negotiation process and affidavit of compliance when a water resource district uses quick take eminent domain. The bill allows a landowner up to 75 days to negotiate with a water resource district before the district may take possession of property and ensures a landowner receives multiple communications from the water resource district during the 75-day negotiation period. The bill requires the water resource board chairman to file an affidavit confirming the district's compliance with the negotiation process and allows the water resource district to rely upon a landowner's actual or constructive notice of the required communications.

IMPACT ON LANDOWNERS OF DEVILS LAKE AND STUMP LAKE WATER LEVELS

The study of the impact on owners of land that has been inundated by the rising waters in Devils Lake and Stump Lake addressed the payment by landowners of property taxes on inundated lands and the fact that as inundated lands become sovereign lands, the landowner does not receive any compensation. The committee was informed an owner whose land is inundated by a lake generally pays property taxes on the inundated land. However, because most of the property under the water has been abated, the taxes are minimal. Nonetheless, the state may take possession of the property if the taxes are not paid.

The committee received testimony regarding the fluctuating water level and the need for consistent operation of the east and west lake outlets and pumps. Keeping the water level too high would harm farmers and residents whose land would be inundated, and keeping the water level too low would harm the tourism and recreation industry that has developed around Devils Lake.

The committee received comments from residents of the areas around Devils Lake and Stump Lake indicating the residents do not want compensation from the state for property lost to rising waters. Instead, the residents sought help repairing and reconstructing roads that had been damaged from water. Because funds from the Federal Emergency Management Agency often come with significant "red tape" and expensive conditions, residents of the area generally are not in favor of accepting the federal funds.

Committee Recommendation

Although committee members generally agreed recommending funding for repairing or reconstructing roads is outside the scope of the committee's study, the committee recommends the Legislative Assembly continue to monitor the impact on landowners in the Devils Lake and Stump Lake area whose lands have been inundated.

FARGO FLOOD CONTROL AND FM AREA DIVERSION PROJECT

Background

In 2009 and 2011, the Legislative Assembly provided $45 million and $30 million respectively for Fargo flood control. In 2013 the Legislative Assembly provided $100 million for the Fargo flood control project to provide a total of $175 million. In addition, the 2013 Legislative Assembly included legislative intent that the state provide up to $450 million for the project, with the remaining $275 million to be provided over the next 4 bienniums. The 2013 Legislative Assembly also limited the use of the funding designated for the Fargo flood control levee and dike protection until the Fargo flood control project receives federal authorization, a project partnership agreement is executed, a federal appropriation is provided for project construction, and the budget for the Fargo flood control project is approved by the State Water Commission.

The 2015 Legislative Assembly provided an additional $69 million for the Fargo flood control project and $60 million for Fargo interior flood control projects, of which $30 million is from the state disaster relief fund, to provide a total of $304 million for flood protection in Fargo. The Legislative Assembly also included legislative intent to provide up to $570 million for Fargo flood control projects, an increase of $120 million. The $120 million is to be used for Fargo interior flood control projects and requires 50 percent matching funds from the Fargo flood authority. These funds may be expended only for Fargo interior flood control projects, including levees and dikes, until a federal appropriation is provided for construction of the Fargo flood control project, at which time it may be used for a federally authorized Fargo flood control project. The Legislative Assembly also included legislative intent that funding for the Fargo flood control project will end June 30, 2021, if a federal appropriation has not been provided by that time. Of the $570 million designated by the Legislative Assembly in 2009, 2011, 2013, and 2015 for Fargo flood control, $266 million has yet to be appropriated. The 2015 Legislative Assembly provided legislative intent that the remaining funding be made available in equal installments over the next 4 bienniums.

Money from the Cass County sales tax has been used for levy work in small communities and for retention. There are 96 water retention projects that encompass 100,000 acres. The FM Area Diversion Authority supports retention and distributed storage, but it is not a replacement for the diversion, and the storage is not part of the diversion project. Retention is supported because it lessens the frequency of which the operation of the project will be required. With the retention projects, it becomes less likely there will be backup of water on other property. Retention projects also lessen the chance of the need to use insurance by agricultural producers.

The total amount of acres that will need to be purchased for the FM Area Diversion Project is around 8,000 acres. The authority will pay taxes on the land and has hired a land management company to take care of the land. The FM Area Diversion Authority likely will sell the land that is not needed in the footprint. Agricultural mitigation will provide financial compensation to landowners. It is a complex issue for agricultural producers to be provided a remedy if the producers will not be qualified for crop protection because of the project. To determine landowner compensation, a consultant has been hired to establish amounts that are available for farmers.

Testimony and Committee Considerations

The committee received several updates, including from the MnDak Upstream Coalition and the FM Area Diversion Authority, on the progress of the FM Area Diversion Project. Because federal approval for the project has not been received, the project has developed into a state project that will be completed within the state borders rather than extending into Minnesota as originally planned. The expansion of the project is expected to cover 6,000 more structures than the plan originally covered. Members of the committee expressed concern over the expanded scope of the project and the price of homes condemned through eminent domain for the project.

In March 2016 the committee was informed the expected cost of the project was $1.8 billion. The expected cost rose to approximately $2.1 billion later in the year. Fargo likely will attempt to use increased sales tax revenue to cover its share of the cost, and Fargo residents will vote on the extension of the sales tax in November 2016. The project sponsors are working with Ernst & Young Infrastructure Advisors, LLP, to develop a public-private funding model for the project. As of March 2016, Cass County and Fargo had each taken out a $50 million loan to provide short-term financing for the project. In September 2016 a representative of Fargo indicated the Army Corps of Engineers is likely to provide $60 million to $70 million for the project in 2017. Although the State Water Commission requires the project to have flood mitigation down to 0.1 foot of water, a representative of Fargo testified that changing that requirement to a 0.5 foot limit, which is the limit used by Minnesota, would reduce the cost of the project by $60 million.

The committee received testimony from a representative of the Army Corps of Engineers, which indicated the corps selected the FM Area Diversion Project as one of six projects to initiate in 2016. Although the representative of the corps suggested the selection indicated federal commitment to the project, committee members expressed concern regarding the availability of federal funding for the project. Because the corps altered the plan from the original National Economic Development plan, which was the basis for the federal and state cost-share for the diversion project, members of the committee expressed concern whether the corps had failed to follow the federal *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* by changing the project.

The committee received Minnesota's draft and final Environmental Impact Statements for the project, and reviewed correspondence from Governor Mark Dayton, Minnesota, to the corps, which cautioned the corps not to proceed with the FM Area Diversion Project until the Minnesota Department of Natural Resources decides whether to approve the project.

Representatives of Richland County and the MnDak Upstream Coalition raised concerns regarding the impact of the project on Richland County. The committee was informed the Cass County Joint Water Resource Board was using eminent domain to condemn property in Richland County and the FM Area Diversion Project may impede growth in Richland County, but would not include flood mitigation plans for Richland County. Representatives of Richland County informed the committee the county stands to lose tens of millions of dollars in tax revenue as a result of the diversion project.

Representatives of Richland County contended alternatives to the current project exist which would mitigate or eliminate the problems for Richland County, and questioned whether alternative plans had been considered adequately. They expressed support for alternatives that would move the project north and continue to provide protection for Fargo. Representatives of the FM Area Diversion Authority argued alternative plans were considered, but none of the alternatives proved reasonable.

The committee received an October 2015 North Dakota State University study of the FM Area Diversion Project entitled *Initial Assessment of the Agricultural Risk of Temporary Water Storage for FM Diversion* by the Department of Agribusiness and Applied Economics. The study is a preliminary evaluation of how temporary water storage during spring flood events may influence agricultural production in the staging area of the diversion project. The study authors rely on an assumption that spring flood events will trigger use of the temporary staging area when the predicted flow of the Red River and Wild Rice River exceeds 17,000 cubic feet per second in Fargo. Ten flood events since 1969 reached that flow level. The study authors concluded the project's temporary water storage plan has a high probability of causing modest revenue losses that will vary with the size of the flood event and will not uniformly affect individual agricultural producers in the staging area.

REPORTS

Souris River Basin Flood Control

The committee received updates regarding the status of the Souris River Basin flood control project in and around Minot. Of the multiple phases of the project, the first four were described as critical and will take about 60 percent of the 2,850 homes in the flood plain out of the flood plain. Removing the homes from the flood plain is estimated to lead to significant flood insurance relief for the homeowners, but will cost approximately $250 million to complete. The committee was informed the project is short approximately $100 million. Minot has committed 50 percent of a one-cent sales tax to the project and has a federal block grant that may be used to acquire properties. Minot is seeking a 75/25 cost-share with the state for the project. The 75 percent state share for the first four phases of the project would be approximately $187 million, $60 million of which has been appropriated by the Legislative Assembly for the project. To this point, the only federal funds for the project are the block grant for property acquisition. After the project feasibility study is complete other federal funding may become available. As of June 2016, approximately $33 million had been spent on the project, including money spent to buyout 270 properties. Although the project needs the state's share of the funds for the first three phases immediately, the state funds for the fourth phase may be provided later.

The committee received information from representatives of the Army Corps of Engineers relating to controlling the water levels in the Souris River Basin. The basin has three reservoirs with flood control storage, and multiple government agencies work together to perform an annual spring forecast of water levels. The United States and Canada executed the *1989 Agreement Between the Government of Canada and the Government of the United States of America for Water Supply and Flood Control in the Souris River Basin*, which constrains the ability of the corps and other federal and state entities to manage water levels in the basin. Because the agreement was executed in a drought year, the agreement does not address problems resulting from high rainfall levels, and has not been updated to address nondrought conditions.

The committee received information from downstream landowners regarding efforts to mitigate impacts of the flood control project on downstream interests. The landowners expressed concern over the impact of flooding and dams on ranching and agricultural operations. Information provided to the committee also addressed how the project's environmental impact study considered downstream impacts of the project.

Grand Forks Water Treatment Plant

The committee received updates regarding the Grand Forks water treatment plant project for which state funds have been authorized. Sixty percent of the engineering design was completed as of November 2015. An at-risk contract was awarded to a construction manager, and planning of the offsite utility and road infrastructure had begun. Construction on the project was anticipated to begin in the fall of 2016. The local share of the project cost will be funded by utility rates, and the project should be completed in 2019 and fully functional by 2020.

Missouri River Correction Center and Fox Island Flood Control Projects

The committee received a status report regarding the Missouri River Correctional Center flood control project and the Fox Island flood control project in November 2015. The Legislative Assembly appropriated $1.2 million for the correctional center flood control project for the 2015-17 biennium. The project sponsors requested the funds from the State Water Commission, and the project was in its final design phase. Easements for the project were being obtained, and the project was expected to be complete in the fall of 2016. The Legislative Assembly appropriated $2.8 million for the Fox Island project for the 2015-17 biennium. Lincoln Township and Burleigh County authorized approximately $920,000 for the project in October 2015, and Burleigh County planned to request the $2.8 million in state funds from the State Water Commission in November 2015. The sponsors planned to initiate construction on the project in late 2016 or early 2017 and complete the project in 2017.

Water Recreation on State Land

The committee received updates from representatives of the Parks and Recreation Department on the status of projects funded by a $1 million grant to develop recreational opportunities on sovereign lands in the state. As of November 2015, $25,000 had been used for one of the projects, and the remainder of the grant remained unused. In 2016 the committee was informed one of the issues holding up the use of the grant is the difficulty of obtaining easements over private land adjacent to the sovereign lands where the projects will be constructed.

Regionalization of Water Supply Systems

The committee received updates regarding municipal water systems and regionalizing water systems from several individuals, including representatives of the North Dakota League of Cities and the North Dakota Rural Water Systems Association. Reasons cited for not joining regional systems included concerns over pricing and losing local control over water supply. In a regional system, the system sets the price charged to a city, and the city sets the rates the city charges residents. Reasons cited for joining regional systems include improved water quality, cost savings, not having to make costly repairs to or invest in costly maintenance of water treatment plants, and not being able to find a certified water treatment plant operator to run a local plant. Committee members expressed support for regionalization of water supply systems to promote economic efficiency and to address problems arising from a lack of certified water treatment plant operators in smaller cities.

Water Permits

The State Water Commission provided information regarding the commission's "in lieu of irrigation" policy (ILOP) pertaining to permits for industrial water supply. The commission has provided annual ILOP permits to private landowners to allow the landowners to sell water for industrial use. The policy allowing ILOP permits has existed since 2010, and the commission is re-evaluating whether to continue issuing ILOP permits in light of decreasing industrial need for water. According to the report, there are approximately 34 ground water ILOP permits and 966 surface water ILOP permits and most of the ground water ILOP taps are within 5 miles of a depot that would remain open without an ILOP permit. Independent water providers and representatives of industries that use independent water supplies expressed concern over the possible elimination of ILOP permits.

Zebra Mussels

The committee received a report regarding the Game and Fish Department's emergency administrative rule regarding aquatic nuisance species. The Game and Fish Department adopted the rule after adult zebra mussels were found in the Red River. Problems posed by zebra mussels include clogging water intakes, five of which exist on the Red River. The Game and Fish Department allowed North Dakota State University to conduct a study on polymer coating water pipes to prevent zebra mussels from affixing to the pipes. The report indicated it is a matter of time before there are zebra mussels in Devils Lake.

Sheyenne River Valley

The committee received a report regarding the progress of Sheyenne River Valley flood protection. Cities in the Sheyenne River Valley, including Lisbon and Valley City, have experienced significant flooding in several years. As a result, a permanent flood protection project for the valley is underway. The project includes buyouts of several properties; construction of levees, floodwalls, and pump stations; and stabilization of the riverbank. The project is funded by the State Water Commission with a local share supported by sales taxes.

Western Area Water Supply Authority

The Western Area Water Supply Authority (WAWSA) is a hybrid local and state water supply system. It is locally led and state funded. Not including any funding in the 2015-17 biennium, the state has provided $229 million, with $110 million in loans provided by the 2011 Legislative Assembly, to WAWSA. The 2013 Legislative Assembly provided $119 million, $40 million in loans, and $79 million from the State Water Commission--$39 million through grants and $40 million through a loan. The Western Area Water Supply Authority did not use all of the $79 million provided.

Historically, WAWSA received funding through specific appropriations in the State Water Commission's budget. The Western Area Water Supply Authority made prepayments, and the revenue forecast was ahead of projections. During the 2013-14 interim, there was a prepayment of approximately $8.6 million on the guaranteed loans, and all interest was current. For the 2015-17 biennium, WAWSA planned to request a $30 million loan from the resources trust fund and a $90 million grant from the 2015 Legislative Assembly. The total amount that would have been requested through 2017 would have been $349 million. The $30 million loan requested was expected to be serviced through industrial sales. Before 2015, WAWSA had an 80 percent loan-to-grant ratio. The $90 million grant request would move WAWSA total funding closer to 50 percent loan and 50 percent grant. In the 2015-17 biennium, WAWSA funding was provided through the State Water Commission allocation process.

The committee received information regarding the financial impact to WAWSA of the slowdown in oil development activity. The committee was informed total water demand and revenue for WAWSA has decreased. Moreover, the WAWSA market share decreased. As of June 2016, WAWSA had approximately $314 million in assets, $223 million in liabilities, and $91 million in equity. A representative of WAWSA informed the committee WAWSA will request $60 million in funding from the state for the 2017-19 biennium to install pipelines and upgrade and maintain pump stations, reservoirs, and water treatment plants.

Although WAWSA has been current on its payments to the Bank of North Dakota, a representative of the Bank informed the committee the Legislative Assembly will need to consider restructuring the WAWSA debt. In 2016 $8,262,000 in annual payments plus 21 percent in operating costs, for a total of $10,458,000 in payments is due. To make the payments to the Bank, WAWSA must have $871,000 per month in sales. Total sales in February 2016 were just over $800,000. Committee members expressed concern with respect to the ability of WAWSA to maintain its current repayment schedule, especially if sales continue to decrease, and expressed the understanding that the $8.6 million prepayment in the 2013-14 interim greatly helped WAWSA stay current on the loans.

The committee received testimony from representatives of WAWSA and independent water providers concerning the usage, rates, and relative market share of these providers. The Western Area Water Supply Authority charges 84 cents per barrel for water, and at least one independent water provider in the area charges 65 cents per barrel. However, the independent water provider did not supply potable water. Some independent water providers expressed concern that state-funded water suppliers like WAWSA compete with private entities. Contrarily, committee members asserted the water belongs to the state, and the independent water providers are able to sell a state resource for profit. Some members of the committee expressed concern that cities outside the WAWSA service area pay more for water than cities served by WAWSA.

The committee received a report on the status of WAWSA construction projects and information regarding the WAWSA administration, the method WAWSA uses to acquire easements, and the prices paid for those easements. According to the report, 386 miles of pipeline was laid during the biennium through August 2016, and WAWSA planned to lay an additional 313 miles before the end of the biennium. The Western Area Water Supply Authority serves approximately 60,000 residents and plans to serve up to 125,000 by 2038 based on current projections. The Western Area Water Supply Authority has 55 construction contracts for 29 projects.

Northwest Area Water Supply Project

The Northwest Area Water Supply Project (NAWSP) is a joint state and federal project to provide water to northwestern North Dakota. The Northwest Area Water Supply Project has been impacted by a federal injunction due to legal issues regarding whether NAWSP complied with the National Environmental Policy Act. The committee received updates on the litigation and the ongoing construction of NAWSP. The Northwest Area Water Supply Project serves approximately 25,000 residents, and approximately $120 million has been spent on NAWSP. Approximately 44 percent of that amount has been reimbursed by the federal government, and Minot has paid about $43 million of the $120 million. The Legislative Assembly appropriated $10 million for NAWSP in the 2015-17 biennium, and approximately $5.5 million was carried over from the prior biennium. According to the testimony, about $12 million was required to complete planning for NAWSP, and the remaining funds may be used for additional work on the water treatment plant in Minot. A representative of the Attorney General's office informed the committee the litigation over NAWSP is continuing.

Southwest Water Authority

The Southwest Water Authority operates and maintains the Southwest Pipeline Project, which is owned by the state and administered by the State Water Commission. The Southwest Water Authority is governed by a board of 15 members representing 12 counties in southwest North Dakota. The pipeline supplies water to approximately 56,000 residents in those counties. The Southwest Pipeline Project is funded through state bonds that are repaid by users, state and federal grants, and funds from the resources trust fund and water development trust fund.

According to the Southwest Water Authority's annual report and testimony provided to the committee, the authority projected revenue for 2016 to be $13.7 million, and has approximately $16 million in a replacement and extraordinary maintenance fund. More than 30 percent of the funds received from the resources trust fund have been repaid, and more than $50 million has been repaid to the state through August 2016. Committee members encouraged the Southwest Water Authority to budget according to the decreasing demand for industrial water.

Status of Water Resource District Projects

The committee received information on the status of water resource district projects that received funding from the state. Most of the projects are related to recreation, flood control, levies, and agriculture improvement. A representative of the Water Resource Districts Association indicated the leadership of water resource districts would be amenable to stricter accountability standards for completing projects timely.

Bureau of Reclamation Municipal, Rural and Industrial Water Supply Program Funding

The committee received information from representatives of the United States Bureau of Reclamation regarding the bureau's funding of rural water projects. There will be $55 million of carryover for approved projects that have not initiated or completed construction during the biennium, $42 million of which is for tribal projects and $13 million of which is for state projects. Committee members expressed concern regarding the high level of carryover, especially because there are shovel-ready projects that need funding.

Western North Dakota Surge Funding

The 2015 Legislative Assembly provided surge funding for infrastructure projects, including water projects in Watford City, McKenzie County, and Williston, due to the increased need for water supply and infrastructure which resulted from the oil development in that part of the state. The committee received detailed status reports relating to the projects undertaken with surge funding. The projects include planning, maintaining, and constructing roads, bridges, drainage ditches, water towers, water mains, government buildings, and other public works. Dozens of projects were completed in 2015 and 2016, and dozens more are under contract or planned for 2017 and beyond. The reports also described how funds from other sources, including private industry and local government budgets, are being used in conjunction with surge funding to complete public works projects.

Assiniboine Basin Commission

The committee received an update from a representative of the Assiniboine Basin Commission regarding the commission's history and activities.

Waters of the United States

The committee received updates from representatives of the Attorney General's office regarding the status of litigation by North Dakota and other states challenging the federal Waters of the United States regulations. The regulations would expand federal jurisdiction to wetlands, tributaries, waters adjacent to wetlands and tributaries, and many prairie potholes. The litigation asserts the regulations give the federal government jurisdiction over all significant bodies of water, are overbroad, and violate federal laws. The state joined with 11 other states to successfully argue for an injunction preventing implementation of the regulations while litigation continues.

Well Water Testing

The committee received a report from a representative of the State Department of Health regarding well water testing and the distribution of testing results to the public. Chapter 23-33 prohibits the department from linking the identity of landowners and well operators to the results of their well water testing. According to a 2003 Attorney General opinion, the department's testing results may not be disclosed if the manner of disclosure could link the owners to the results. The department provides testing results to well owners only and sends reminders to owners about the need to routinely test their well water.

WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-22 established the Workers' Compensation Review Committee. The committee is directed to review workers' compensation claims brought to the committee and determine whether changes should be made to the workers' compensation laws. North Dakota Century Code Section 54-35-22 provides for a six-member committee comprised of two members of the Senate appointed by the Senate Majority Leader, one member of the Senate appointed by the Senate Minority Leader, two members of the House of Representatives appointed by the House Majority Leader, and one member of the House of Representatives appointed by the House Minority Leader. In addition to this statutory directive to review workers' compensation claims, the committee has two additional statutory charges:

1. Select up to four of the elements to be included in the quadrennial performance evaluation of Workforce Safety and Insurance (WSI) and receive the performance evaluation report and review any actions taken resulting from the performance evaluation report (NDCC Section 65-02-30).
2. Receive WSI annual reports on pilot programs to assess alternative methods of providing rehabilitation services (NDCC Section 65-05.1-06.3).

In addition to the three statutory duties of the committee, the Legislative Management charged the committee with receiving three reports:

1. Workforce Safety and Insurance biennial report regarding compiled data relating to safety grants issued under NDCC Chapter 65-03 (NDCC Section 65-03-05).
2. Workforce Safety and Insurance report on recommendations based on a biennial safety review of Roughrider Industries work programs and a biennial performance review of the program of modified workers' compensation coverage by WSI (NDCC Section 65-06.2-09).
3. Workforce Safety and Insurance report on industry interest in using safety programs under NDCC Section 65-03-04 to provide grants to an industry association for alcohol server training to employees of bars and restaurants that serve alcohol to address workplace safety and public safety (Section 3 of 2015 House Bill No. 1416).

Committee members were Senators Nicole Poolman (Chairman), Ralph Kilzer, and George Sinner and Representatives Bill Amerman, George Keiser, and Dan Ruby.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2016. The Legislative Management accepted the report for submission to the 65th Legislative Assembly.

CLAIM REVIEW

General Background

Workers' compensation laws in North Dakota are found primarily in NDCC Title 65. The administrative rules adopted by WSI are found in North Dakota Administrative Code (NDAC) Title 92. Section 12 of Article X of the Constitution of North Dakota specifically addresses the state's workers' compensation agency, providing for a constitutional continuing appropriation of the workers' compensation fund for the purpose of paying workers' compensation benefits.

North Dakota Century Code Section 54-35-22 established the Workers' Compensation Review Committee effective August 1, 2005. The law requires the committee to meet once each calendar quarter unless there is no claim to review. The committee operates according to the laws and procedures governing the operation of Legislative Management interim committees.

Interim History

The following is a history of the committee's activities relating to claim reviews conducted under NDCC Section 54-35-22 and legislative recommendations made:

Interim	Claims Reviewed	Bills Recommended
2005-06	11	3
2007-08	15	9
2009-10	4	7
2011-12	2	4
2013-14	1	2

Claims Review Procedure

The committee began the interim by establishing a procedure and protocol for conducting its charge of reviewing claims, based on the protocol and application packet used during the 2013-14 interim. The revised application packet included a cover letter explaining the application process and eligibility requirements, a copy of NDCC Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

To notify the public of the committee's activities and to solicit injured employees to submit their claims for review, the committee published the application packet on the legislative branch website and mailed a copy of the application packet to injured employees who recently utilized the claim review services of WSI's Decision Review Office (DRO).

The committee established the following committee meeting procedure, which was followed for the claims reviewed by the committee:

1. Committee members have an opportunity before and during the committee meeting to review the binder of claim review information and to review the injured employee's WSI electronic records.
2. An ombudsman from WSI summarizes the injured employee's case.
3. The injured employee presents the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues are presented by the injured employee, a representative of the injured employee, or both of these individuals.
4. One or more representatives of WSI comment on the workers' compensation issues raised.
5. Interested persons are invited to comment on the workers' compensation issues raised as part of the claim review.
6. Committee members have an opportunity to discuss the issues raised.

Each claim reviewed was allocated a period of time in which the committee conducted the initial claim review. Following the initial review, the committee retained the authority to continue to discuss issues raised as part of the review. The committee may request additional information on specific issues and reviews this information at one or more future meetings. During a committee meeting at which a claim is reviewed, a WSI representative is available to electronically access the injured employee's WSI records.

First Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- The injured employee injured her knee on September 9, 2009, working as an environmental service worker at a hospital. She was unable to return to work at that time.
- September 22, 2009, WSI accepted the claim and awarded medical and wage loss benefits.
- December 1, 2009, the injured employee returned to work.
- November 16, 2010, the injured employee reapplied for wage loss benefits due to ongoing problems with her injured knee.
- December 2, 2010, WSI accepted the reapplication and awarded wage loss benefits.
- Upon reaching maximum medical improvement, WSI developed a vocational rehabilitation plan. On February 24, 2015, WSI sent the injured employee a notice of intention to discontinue/reduce benefits on April 23, 2015, as her vocational rehabilitation plan had been approved. The vocational rehabilitation plan indicated she has transferable skills to return to work as a receptionist, information clerk, customer service representative, bill and account collector, parking lot attendant, and greeter.
- The WSI order indicated the injured employee's transferable skills should allow her to compete in gainful employment at a wage greater than her preinjury weekly wage, and therefore she was not entitled to partial disability benefits.
- April 20, 2015, the injured employee requested the assistance of DRO.
- July 28, 2015, DRO issued its certificate of completion without any recommended change.
- The injured employee did not request an administrative hearing and WSI's order became final.

Issues for Review

The injured employee provided the following issues for consideration:

- She had an allergic reaction to the nickel in the metal implants used in her knee surgery and she is leery of undergoing another surgery due to these problems she had with the first surgery. Therefore, she is unable to adequately address the pain and limitations she is experiencing and is unable to work. She thinks these surgical problems could have been avoided with adequate presurgery preparatory testing.
- Loss of earnings is only one of the consequences of losing her job due to the workplace injury. She also has lost her health insurance and other employment benefits. Receipt of Social Security disability benefits and Medicare is not an equal trade.
- Vocational rehabilitation assessment should have occurred or reoccurred later in her claim and should have reflected her abilities at the time the claim for wage loss was closed. When she applies for jobs, employers are not interested in hiring her once they learn of her limitations.
- Vocational rehabilitation plan design should include more input from the injured employee and WSI should have been more responsive to her when she contacted WSI with questions and concerns.

Workforce Safety and Insurance Response

The WSI representative provided an overview of the rehabilitation hierarchy options effective after December 31, 2005, reported the injured employee qualified for vocational rehabilitation option F, and clarified option E is seldom used because of the difficulties associated in monitoring local labor markets.

Option	
A	Return to same position, same employer
B	Return to same occupation, any employer
C	Return to modified position, same employer
D	Return to modified or alternative occupation, any employer
E	Assess employability, local labor market, 35-mile radius
F	Assess employability, statewide labor market
G	Retraining, 104 weeks maximum
H	Retrained earnings capacity, NDCC Section 65-05.1-01(6)

The WSI representative reported a vocational rehabilitation assessment includes a functional capacity test performed by a physical therapist and an assessment interview with the injured employee, and before a vocational rehabilitation plan is finalized, WSI checks with medical providers to be certain the proposed jobs are appropriate for the injured employee.

The WSI representative reviewed how WSI documents contacts with injured employees using an electronic notepad field. When an injured employee contacts WSI, the goal is to reply within 24 hours.

Comments by Interested Persons

The committee received comments from two members of the public who reported they are injured employees. Testimony was limited to issues raised by the injured employee scheduled for claim review.

Committee Considerations

Committee members identified the following issues raised by the injured employee:

- Vocational rehabilitation plans may not adequately consider an injured employee's mental and physical abilities.
- Vocational rehabilitation may not adequately address deteriorating medical conditions and practical return-to-work opportunities.
- WSI's responses to injured employees may not be timely.

Second Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- The injured employee injured his shoulder on December 20, 2013, working as a material handler. He received treatment for the injury and was able to return to work.
- WSI accepted liability and paid the associated medical expenses and wage loss benefits.

- July 16, 2014, the injured employee underwent shoulder surgery to address his workplace injury. Workforce Safety and Insurance paid medical expenses and wage loss benefits.
- December 29, 2014, the injured employee underwent a functional capacity evaluation as part of the vocational rehabilitation process. The functional capacity test provided the injured employee should limit overhead work, not lift over 50 pounds, not push or pull over 100 pounds, and not reach above shoulder level.
- May 28, 2015, the vocational consultant's report was completed, providing the injured employee was qualified to pursue employment in the following fields: operating engineer and other construction equipment operator (heavy equipment operator), heavy and tractor-trailer truck driver, light truck or delivery service driver and bus driver, and transit and intercity driver.
- The WSI order indicated the injured employee's transferable skills should allow him to compete in gainful employment at 90 percent of his preinjury weekly wage, and therefore he was not entitled to partial disability benefits.
- August 17, 2015, WSI issued an order denying further disability and rehabilitation benefits.
- August 31, 2015, the injured employee appealed WSI's order and requested the services of DRO.
- September 11, 2015, DRO issued a certificate of completion, indicating no recommended change to the order.
- The injured employee did not request an administrative hearing and WSI's order became final.

Issues for Review

The injured employee provided the following issues for consideration:

- Although physical therapy treatment initially helped, it was not enough of an improvement for him to return to his preinjury job. He said there is a problem with employers terminating injured employees. He was terminated the same day he underwent an MRI.
- There is a catch-22 when treatment includes narcotic pain medication and an employer has a zero tolerance policy.
- Vocational rehabilitation errs when it finds an injured employee can return to the previous occupation, when in reality, an employer will not hire the injured employee with the injury limitations. Instead, WSI should provide training to allow an injured employee to pursue a less physical line of work.
- Unsafe jobsites contribute to workplace injuries.
- Due to the low incidence of fraud by employees, it is offensive for employers to vilify employees.
- WSI might be practicing age discrimination due to its unwillingness to provide vocational education to train an older worker for a new career.

Workforce Safety and Insurance Response

The WSI representative reported the good faith job search requirement of five daily contacts is not statutory, but sets a standard that, if met by the injured employee, the injured employee will not be at risk of noncompliance issues. Workforce Safety and Insurance established the five contact job search standard in response to requests from employees for a minimum standard. A "contact" includes a newspaper job search and an internet job search. Once an injured employee reaches maximum medical improvement, the injured employee's job is to find a job.

The WSI representative explained the standard for Social Security disability is different from WSI's standards. If an injured employee receives Social Security disability benefits, it impacts the amount of WSI benefits.

Committee Considerations

Committee members identified the following issues raised by the injured employee:

- Employers should want safe workplaces, both to keep employees safe as well as to keep workers' compensation premiums low.
- The use of narcotics by injured employees impacts employability. Misuse of narcotics by injured employees may have far-reaching social consequences.

Third Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- The injured employee injured his hip on January 15, 2009, working as a concrete foreman.

- WSI accepted a claim for a right hip sprain/strain.
- April 27, 2009, the injured employee was presumed to have reached maximum medical improvement.
- January 16, 2015, the injured employee saw a physician regarding right hip pain and the physician noted some severe degenerative changes in the hip, requiring hip replacement.
- February 23, 2015, WSI denied the injured employee's request to reopen his presumed closed claim.
- March 5, 2015, WSI received the injured employee's request for reconsideration which stated he felt his current degenerative changes were due to 30 years of concrete construction work and due to the January 15, 2009, work incident.
- March 17, 2015, WSI issued an order stating the injured employee was not entitled to additional benefits because the medical evidence did not show his current condition was related to the work injury.
- April 6, 2015, the injured employee requested the assistance of DRO to review the March 17, 2015, order.
- May 19, 2015, DRO issued a certificate of completion indicating no recommended change in the order.
- The injured employee did not request an administrative hearing and WSI's order became final.

Issues for Review

The injured employee provided the following issues for consideration:

- Regardless of the existence of a pre-existing condition, before the workplace injury he did not have hip pain or problems performing his job and after the injury he has hip pain causing him problems performing his job.
- The injured employee feels he is being penalized because he did not continue to complain about his right hip pain, resulting in his claim closing. If the workers' compensation program is not designed to help hard working people like him, he questioned who is it designed to help.
- Although health insurance will cover his hip replacement surgery, he will not receive wage loss benefits during his postsurgery recovery and he will be subject to out-of-pocket medical expenses such as copayments.
- Injured employees choose to not pursue appeals of WSI decisions because of the difficulty of finding legal representation and there is a perception it is unlikely WSI will be overturned on appeal.

Workforce Safety and Insurance Response

The WSI representative reviewed NDCC Section 65-01-02(10)(b)(7), which clarifies when an injury attributable to a pre-existing condition is not considered to be a compensable injury. However, under NDCC Section 65-05-15, the law addresses circumstances under which coverage may exist when a compensable injury combines with a noncompensable injury.

The WSI representative reviewed NDCC Section 65-05-35, which establishes the closed claim presumption, which applied in this injured employee's claim. If a claim is dormant for an extended period of time without treatment, the claim becomes difficult to assess. If a claim is dormant for 4 years or more, the claim is presumed closed. Clear and convincing evidence is required to reopen a claim presumed closed due to dormancy.

Committee Considerations

Committee members identified the following issues raised by the injured employee:

- In the orthopedic specialty there are scholarly studies on joint degeneration and it is likely a preinjury x-ray would have shown degeneration, even if there was no report of pain at that time.
- An employee's experience and knowledge is very valuable to an employer.
- The issues of pre-existing conditions and degenerative conditions are issues constituents commonly raise with legislators, and these issues are especially relevant as the workforce ages.

Fourth Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- The injured employee injured his lumbar spine on February 19, 2007, working as a laborer.
- March 8, 2007, WSI accepted the claim and awarded medical and wage loss benefits.
- The injured employee received wage loss benefits for the period May 24, 2007, through July 8, 2007, after which he was released to return to work.

- August 28, 2009, WSI issued an order denying further disability and rehabilitation benefits.
- October 27, 2009, the injured employee, through his attorney, requested a hearing on the August 28, 2009, order.
- August 4, 2010, the injured employee withdrew his request for hearing and the hearing scheduled for August 10, 2010, was canceled.
- July 5, 2014, the injured employee reapplied for wage loss benefits, claiming a worsening of his work-related medical condition.
- October 1, 2014, WSI issued a notice of decision accepting reapplication and awarding medical and wage loss benefits.
- The injured employee received wage loss benefits beginning July 24, 2014.
- August 11, 2014, the injured employee's treating physician submitted to WSI information regarding the injured employee's cervical spine because the injured employee felt his cervical spine problem was directly related to his lumbar spine injury.
- November 25, 2014, WSI issued a notice of decision denying the injured employee's claim, based on a finding the injured employee's cervical spine condition was unrelated to his February 19, 2007, lumbar spine work injury.
- December 6, 2014, the injured employee submitted to WSI a request for reconsideration indicating why he felt his cervical spine problems are related to his 2007 work injury.
- March 23, 2015, WSI issued an order stating WSI was not liable for the injured employee's cervical condition.
- April 2, 2015, the injured employee requested the assistance of DRO.
- April 29, 2015, DRO issued a certificate of completion indicating no recommended change in WSI's order.
- October 6, 2015, an administrative law judge issued findings of fact, conclusions of law, and final order, affirming WSI's March 23, 2015, order.
- The injured employee did not appeal the administrative decision and the order became final.

Issues for Review

The injured employee provided the following issues for consideration:

- WSI's system does not deal well with multiple injuries related to a single work-related event.
- WSI's system does not deal well with multiple workplace injuries filed over a long period of time.
- If a misdiagnosis is discovered at a later date, WSI should reopen the claim and provide coverage based on the later discovered information.
- Vocational rehabilitation plans are not always accurate and list jobs for which the injured employee does not have the necessary abilities. Additionally, if the plan identifies a low-paying job with poor benefits, it is not reasonable to expect an injured employee to move across the state to take that low-paying job with poor or nonexistent benefits.
- It would be beneficial to have programs that incentivize employers to take the risk of hiring an injured employee to allow an injured employee to establish a positive relationship with an employer and to allow a trial work period to determine whether the injured employee can perform the job duties.
- Medical providers are frustrated with WSI's system.
- DRO is biased.
- Vocational rehabilitation plans should be designed through collaboration with the injured employee.
- Since every employee is going to have some degree of degeneration, WSI should not be able to deny responsibility claiming a pre-existing condition.

Workforce Safety and Insurance Response

The WSI representative provided a chronological list of the injured employee's multiple claims as well as a summary identifying the body part injured in each claim.

Committee Considerations

Committee members identified the following issues raised by the injured employee:

- The injured employee, medical providers, and WSI may be challenged when there is a workplace event with multiple injuries as well as when there are multiple claims for workplace injuries over a long period of time.
- There may be methods through which the system could be improved to facilitate better communication between various medical providers.

Fifth Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- The injured employee injured his left upper arm on January 28, 2014, while working in the oil field.
- February 18, 2014, WSI accepted the claim and awarded wage loss benefits.
- March 2, 2015, a vocational rehabilitation plan was approved, indicating the injured employee has transferable skills to return to work as a manager/owner of land development, cost estimator, first line supervisor of constructions trades, or extraction worker.
- March 20, 2015, WSI issued a notice of intent to discontinue benefits after 2 months of work search benefits.
- March 31, 2015, the injured employee, through his attorney, submitted a request for reconsideration.
- April 22, 2015, WSI issued an order awarding partial disability benefits.
- April 22, 2015, the injured employee requested the assistance of DRO.
- May 20, 2015, DRO issued a certificate of completion indicating no recommended change to the order.
- June 2, 2015, the injured employee, through his attorney, requested a hearing. The hearing was scheduled and the injured employee continued to the hearing without the assistance of an attorney.
- December 19, 2015, the administrative law judge issued an order, affirming WSI's order. The administrative law judge found the first appropriate rehabilitation option was a return to work in the statewide job pool.
- This order was not appealed to the district court.
- This injured employee also appealed WSI's order denying permanent partial impairment benefits, based on an impairment of less than 14 percent whole body. This administrative proceeding was dismissed as a result of the injured employee withdrawing his request.

Issues for Review

The injured employee provided the following issues for consideration:

- The system does not adequately compensate injured employees for the significant loss of motion and ongoing pain resulting from injuries.
- The system does not recognize an injured employee's needs for legal representation. The injured employee needs an attorney to pursue any issues the injured employee might have with WSI. Without an attorney, the deck is stacked against the injured employee.

Workforce Safety and Insurance Response

The WSI representative testified that under NDCC Section 65-05-12.2, to qualify for a permanent partial impairment award, an injured employee must be found to have a whole body impairment of at least 14 percent.

The WSI representative provided a brief history of the workers' compensation system, stating when the workers' compensation system was created, the injured employee gave up the right to sue the employer in exchange for sure and certain relief. As part of this bargain, the injured employee gave up the right to sue for pain and suffering.

The WSI representative summarized the history of the law and administrative rules addressing when WSI is directed to pay an injured employee's attorney's fees. The testimony indicated that before 1995, WSI paid attorney's fees regardless of outcome, and as a result, almost every claim was appealed. According to the representative of WSI, this approach flooded the system and it was a disaster, with an immense amount of money going to pay for plaintiff's counsel. As a result of the legislative reforms in 1995 which limit the payment of attorney's fees to when the injured employee prevails, WSI recognized premium savings.

The WSI representative reported when WSI contracts for outside counsel, it pays those attorneys the same hourly rate as WSI pays an injured employee's attorney--$150 per hour.

Committee Considerations

Committee members identified the following issues raised by the injured employee:

- There is a difference between a disability, which relates to the loss of ability to work, and impairment, which relates to loss of function of a part of the body.
- The inability of injured employees to find legal representation is an issue that is regularly raised by injured employees.

Sixth Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- July 6, 2011, the injured employee injured his right groin while working for a food manufacturer.
- December 6, 2011, WSI accepted the claim and awarded medical benefits for a lumbar sprain/strain and wage loss benefits.
- March 5, 2014, WSI issued a notice of intention to discontinue benefits as the injured employee had received temporary total disability benefits for a total of 104 weeks, and the injured employee subsequently became entitled to receive temporary partial disability, with an earnings capacity of $0, as he was not able to work.
- November 24, 2014, WSI received an independent medical examination (IME) report indicating the substantial contributing factor to the injured employee's back pain was degenerative disease. The injured employee's treating doctor agreed with the IME assessment.
- March 19, 2015, WSI issued a notice denying further benefits based on the IME report and the opinion of the treating physician. The medical benefits ended on March 6, 2015, and wage loss benefits ended on April 9, 2015.
- March 24, 2015, the injured employee's attorney requested reconsideration.
- June 5, 2015, the injured employee requested the assistance of DRO.
- June 10, 2015, WSI issued an order denying further liability on the claim.
- June 25, 2015, DRO issued a certificate of completion indicating no recommended change in the decision.
- July 2, 2015, the injured employee requested an administrative hearing and participated in the hearing without legal counsel.
- January 4, 2016, the administrative law judge issued an order affirming WSI's order. This order was not appealed and became final.

Issues for Review

The injured employee provided the following issues for consideration:

- WSI's system does not adequately address the situation in which prior to a workplace injury the employee could work, but following the injury is unable to work.
- WSI's doctors do not have the injured employee's interests at the forefront, as they work for WSI.
- Injured employees do not have meaningful access to legal representation.

Workforce Safety and Insurance Response

The WSI representative stated the law provides WSI may not cover a pre-existing condition unless the workplace injury was a substantial contribution to the condition.

Committee Considerations

Committee members recognized multiple injured employees have raised the issue of inability to access legal representation.

Seventh Claim

Claim Summary

The following is a summary of events of the injured employee's workers' compensation claim:

- November 17, 2014, the injured employee filed a claim with WSI, claiming an injury of infection she incurred while working as a housekeeper for a hotel in Stanley, North Dakota. The date of injury was July 1, 2014. The injured employee reported she came to work one day and she began to itch all over her body. At the emergency room, a physician told her the itching was from the water in Ross, North Dakota.

- The injured employee saw several doctors in an effort to determine the cause of her rash and itching. She received a variety of possible diagnoses. The physicians were unable to determine for certain whether the rash was a result of a workplace exposure.
- December 12, 2014, WSI issued an order denying benefits, concluding the injured employee failed to prove a compensable work injury.
- January 8, 2015, the injured employee appealed WSI's order, requesting reconsideration, indicating her doctor believes the skin condition was caused by something from work.
- March 25, 2015, WSI issued an order denying the claim, finding no objective medical evidence to support the claimant suffered an injury as a result of the work activities that occurred on July 1, 2014.
- The injured employee did not appeal the order and it became final.

Issues for Review

The injured employee stated WSI did not give weight to the opinion of the doctor who stated the skin infection was related to employment.

Workforce Safety and Insurance Response

The WSI representative stated to be eligible for workers' compensation benefits, an employee must establish eligibility by objective medical evidence.

To be objective medical evidence, the evidence must be substantiated.

Committee Considerations

Committee members identified the following issues raised by the injured employee:

- In a civil claim, the plaintiff has the burden of proof, much like the injured employee has the burden to qualify for workers' compensation benefits. If in the future, evidence is discovered linking the injured employee's skin infection to the workplace, WSI should exercise its continuing jurisdiction to reopen the claim.
- Inability of an injured employee to access legal representation is a reoccurring issue.

Workforce Safety and Insurance Status Updates

To keep apprised of current events at WSI, the committee received status updates on timely topics and topics raised as part of the claim review process.

Legislative Package

The committee received a status report on the implementation of 2015 legislation relating to workers' compensation and received an overview of WSI's proposed legislative package for the 2017 legislative session. The proposed legislative package addresses medical and vocational services contracts, credit card fees, subrogation liens, administrative orders, DRO, medical expense assessments, securing premium payments, employer noncompliance, false statements by employers, providing notice to treating doctors, Social Security offset, criminal offenses for filing a false claim, and vocational rehabilitation pilot program reports.

Security Breach

The committee received a status report on a security breach that occurred at WSI. In May 2015 the Information Technology Department (ITD) became aware of unusual activity with WSI's information on the ITD server and therefore shut down the server. On June 10, 2015, ITD notified WSI that WSI incident reports and online employer reports from 2006 to 2015 may have been accessed in the breach. Although it appears none of the information was downloaded in the course of the breach, to be cautious, WSI entered a 1-year contract with a company that repairs credit. Workforce Safety and Insurance notified parties that may have been affected and informed them the credit repair services will be available at no charge for 1 year.

Pre-existing Conditions

In response to issues raised during the claim review, the committee reviewed element 5 of the 2010 quadrennial performance evaluation, which was included in the performance evaluation to address a 2009 study charge directing the Workers' Compensation Review Committee to study pre-existing conditions. The related performance evaluation recommendations were:

- **Recommendation 5.1.** Amend the existing internal WSI Claims Procedure 120 to require claims adjusters to send a questionnaire to the treating physician and/or an IME to inquire as to whether the employment substantially accelerated the progression or substantially worsened the severity of the pre-existing injury, disease, or condition. Provide training to all affected WSI claim and DRO staff.

- **Recommendation 5.2.** At the time a compensability decision is made for a claim with a pre-existing/trigger defense, WSI claims adjusters and supervisors should determine if the underlying condition would have progressed similarly absent the work injury, per WSI Claim Procedure 120.
- **Recommendation 5.3.** In circumstances where there is a prior medical condition or pre-existing work restriction, WSI should obtain this information to determine if there is a substantial objective baseline from which to proceed, such as input from treating physicians familiar with the patient's medical conditions. This would allow WSI to establish an objective baseline and an accurate fact basis from which to proceed. The injured worker and the treating physician should be asked to provide documentation outlining any change in the injured worker's functional level of activity (including activities of daily living, if appropriate), change in any prior level of physical impairment, and/or a change in treatment frequency or severity attributed to the work incident.
- **Recommendation 5.4.** Utilize the IME process to resolve disputes arising out of claim denials for pre-existing conditions, prior conditions, and degenerative conditions.
- **Recommendation 5.5.** We recommend that WSI prepare legislation for consideration by the legislature which repeals the aggravation statute for injuries on or after a date in 2011 to be determined by the legislature.

Vocational Rehabilitation

In response to issues raised during the claim review process, the committee reviewed WSI's vocational rehabilitation system. Of the 2,448 time-loss claims filed with WSI in fiscal year 2016, 772 were referred to vocational rehabilitation.

The committee was informed at any given time there are approximately 500 vocational rehabilitation claims in the system, and $648 per week is the maximum wage loss benefit WSI will pay an injured employee. However, if the injured employee returns to work at a decreased earning level, that injured employee may qualify for up to 5 years of temporary partial disability payments. As part of the vocational rehabilitation process, if an injured employee experiences an injury that changes or evolves over the course of vocational rehabilitation, the functional capacity evaluation should address this change as the evaluation is a whole body evaluation. If appropriate, WSI may perform a second functional capacity evaluation.

Attorney's Fees

In response to issues raised during the claim review process, the committee reviewed the laws and administrative rules relating to WSI payment of injured employees' attorney's fees. The committee reviewed the origin of WSI's fee schedule for attorney's fees, which is addressed under NDAC Section 92-01-02-11, adopted in 1990. It was reported WSI pays its contract attorneys the same hourly rate WSI pays the injured employee's attorney. Workforce Safety and Insurance calculates the fee cap based on the average attorney costs per appeal. Additionally, approximately every 2 years WSI updates the hourly attorney fees based on changes in the cost for WSI to contract with outside counsel. Under NDCC Section 65-10-03, in the case of a judicial appeal with issues that are unusually complex, an injured employee's attorney may request attorney's fees in excess of the maximum fee. Workforce Safety and Insurance makes the determination of whether issues are unusually complex.

The committee received testimony indicating there is a very low number of instances in which WSI appeals an order in which the injured employee initially prevails. Approximately 5 to 10 times per year WSI appeals an administrative decision, and there are typically 300 administrative appeals per year. At the administrative level, WSI has a 65 to 67 percent rate of prevailing, which translates to approximately 90 claims per year in which the injured employee prevails.

REPORTS

Quadrennial Performance Evaluation

North Dakota Century Code Section 65-02-30 directs the committee to receive a report on the status of the WSI quadrennial performance evaluation. A representative of WSI reported of the 40 recommendations made in the 2014 performance evaluation:

- 7 recommendations, either in full or in part, were works-in-progress before receiving a recommendation.
- WSI concurs with 29 recommendations.
- WSI partially concurs with 5 recommendations.
- WSI does not concur with 6 recommendations.
- As of August 2015, WSI closed out 26 recommendations and 14 remain works-in-progress.

Rehabilitation Services Pilot Program Report

Pursuant to NDCC Section 65-05.1-06.3, the committee received reports on WSI's system of pilot programs allowing WSI to assess alternative methods of providing rehabilitation services. Workforce Safety and Insurance is implementing

a collaborative vocational support pilot program for claimants. The focus of this pilot program is to provide funding to assist claimants at the onset of the vocational rehabilitation process to access counseling and financial services. Workforce Safety and Insurance is contracting with two counselors to help claimants deal with coping strategies and with a firm of financial planners to assist claimants with financial stability.

Under this pilot program, a claimant will qualify for up to six visits with the counselors and up to four visits with the financial planners. Sessions are confidential, with the exception of situations for which there is the potential for harm to the claimant or harm to WSI.

Workforce Safety and Insurance will continue to meet regularly with the contractors and survey claimants who have participated in the pilot program to assist WSI in improving the program.

Safety Grants Report

Pursuant to NDCC Section 65-03-05, the committee received the biennial report from WSI regarding compiled data relating to safety grants issued under NDCC Chapter 65-03.

Modified Workers' Compensation Program Performance Review and Roughrider Industries Safety Review

Pursuant to NDCC Section 65-06.2-09, the committee inquired whether the modified workers' compensation program performance review and the Roughrider Industries safety review include any recommendations. Because the reviews do not make any recommendations for a change in either program, WSI was not required to make a report to the committee.

Alcohol Server Training

Section 3 of 2015 House Bill No. 1416 directed WSI to investigate whether there is industry interest in using safety programs to provide grants to an industry association to provide alcohol server training, and to report to the committee the outcome of this investigation.

In performing this charge, WSI consulted with the North Dakota Hospitality Association and determined sufficient efforts are being made by the North Dakota Safety Council, local hospitality establishments, local public health units, and local law enforcement agencies for the purpose of providing server training and there is no need to provide additional resources toward this effort. Workforce Safety and Insurance will not be pursuing the use of safety grants for the purpose of server training.

CONSIDERATIONS AND RECOMMENDATION

Considerations

In response to concerns raised by injured employees in the claim review process that injured employees have problems accessing legal representation, the committee considered three bill draft alternatives that would direct WSI to pay an injured employee's attorney's fees on appeal when the employee prevails, regardless of whether WSI ultimately prevails on further appeal. Under current law and application of administrative rules, WSI does not pay attorney's fees at any level of appeal if an injured employee prevails at a lower level, but WSI ultimately prevails on appeal.

Two of the bill drafts would limit WSI's payment of attorney's fees to the level of appeal at which the injured employee prevailed. Of these two bill drafts, one clarified the total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails. A representative of WSI testified in support of including this clarifying language and that the clarifying language is appropriate as a result of the proposed change in law. Although this clarification could be addressed by administrative rule, codifying the language will prevent this possible lapse in clarity until rules are adopted. Committee members had differing opinions on whether it is appropriate to address the fee cap in law versus administrative code.

The third bill draft would not limit WSI's payment of attorney's fees to the level of appeal at which the injured employee prevailed. The proponent of this bill draft stated the expansion of payment of attorney's fees would have a minor fiscal effect as WSI reports it typically appeals fewer than 11 orders per year and it would not encourage frivolous appeals. Committee members had differing opinions on whether this bill draft moved far enough or too far in increasing access to legal representation.

Recommendation

The committee recommends Senate Bill No. 2048 to direct WSI to pay an injured employee's attorney's fees on appeal when the employee prevails, regardless of whether WSI ultimately prevails on further appeal. The bill limits WSI's payment of attorney's fees to the level of appeal at which the injured employee prevailed.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2015-16 INTERIM

The following table identifies the bills and resolutions considered by the Legislative Management for study during the 2015-16 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1003 § 3	Receive report from the State Board of Higher Education on the status of the development of the unified workforce, vocational, and technical education program system. (Higher Education Committee)
1003 § 4	Approve a State Board of Higher Education plan to reorganize the office of the Commissioner of Higher Education. (Budget Section)
1003 § 25	Receive report from the State Board of Higher Education regarding distributions from the deferred maintenance, campus security, and internal audit funding pools. (Higher Education Committee)
1003 § 27	Receive report from NDSU regarding the status of the Minard Hall project and may request increased spending authorization from the Budget Section for the project. (Budget Section)
1003 § 38	Receive report from the State Board of Higher Education regarding the use of extraordinary repairs funding and related matching funds. (Higher Education Committee)
1003 § 39	Approve any tuition rate increases over 2.5 percent by the State Board of Higher Education for the 2015-16 or 2016-17 academic years. (Budget Section)
1003 § 40	Receive a report by the State Board of Higher Education before July 1, 2016, on the operations of Dickinson State University. The report must detail the financial condition of the institution and board directives and plans to improve the financial stability of the institution. (Legislative Audit and Fiscal Review Committee)
1003 § 45	Consider studying the delivery methods of higher education courses offered by institutions under the control of the State Board of Higher Education. The study, if conducted, must include a review of current methods of distance education offered by institutions, options to improve delivery methods, revenue generated by each type of delivery method, and how course delivery methods may affect future campus infrastructure needs and must include study of the components of the higher education funding formula established in NDCC Chapter 15-18.2, including the uses of funding provided through each of the components for costs-to-continue, salary adjustments, and other inflationary adjustments and tuition waivers. (Higher Education Committee)
1003 § 46	Consider studying the missions of all two-year institutions and the missions of any other institutions under the control of the State Board of Higher Education, as determined by the Legislative Management, including the feasibility and desirability of the institutions offering only workforce and career and technical education programs. The study must review the current missions of the institutions, current and projected course and program enrollments, projected workforce needs, including how the institutions can serve the needs, and options to increase operating efficiencies. (Higher Education Committee)
1003 § 47	Consider studying administrative costs at institutions under the control of the State Board of Higher Education. The study, if conducted, must review the number of administrator positions at each institution, the number of new administrator positions added at each institution during the previous five academic years, the total salaries and benefits associated with the administrator positions, the average salaries and benefits for administrator positions at each institution for each of the previous five fiscal years, the percentage of overall institution operating costs attributable to administration, and options to provide future increased legislative appropriations to institutions specifically for instructional purposes. (Higher Education Committee)
1004 § 7	Consider studying the feasibility and desirability of the University of North Dakota acquiring the building that houses the University of North Dakota forensic pathology center. (Health Services Committee)
1012 § 10	Shall study the truck size and weight provisions under NDCC Chapter 39-12 relating to size, width, and height restrictions, in order to ensure the state of North Dakota may harmonize its truck size and weight regulations with the regulations of the states in the Western States Transportation Alliance, and shall utilize the findings of the collaborative study of the Department of Transportation and the Upper Great Plains Transportation Institute to determine appropriate changes to state law. (Transportation Committee)
1012 § 12	Receive a report from the Department of Transportation by June 30, 2016, regarding its study of state funding distributions and allocations to public transportation providers. (Transportation Committee)
1012 § 18	Receive a report from the Department of Transportation regarding the department's updated North Dakota State Rail Plan. (Transportation Committee)
1014 § 25	Receive report from the Industrial Commission on the use of the funding provided for the core library expansion project, including the amounts spent to date and the amounts anticipated to be continued into the 2017-19 biennium, and on the progress of the project. (Budget Section)

Bill or Resolution No.	Subject Matter (Committee)
1014 § 26	Receive report from the Bank of North Dakota on the use of the funding provided for the North Dakota Financial Center, including the amounts spent to date and the amounts anticipated to be continued into the 2017-19 biennium, and on the progress of the project. (Budget Section)
1015 § 4	Shall study pretrial services, sentencing alternatives, treatment options, and other related issues. (Incarceration Issues Committee)
1018 § 25	Consider studying issues related to the state's development of a civilian ground center. The issues include: deployable pilots, sensor operators, and aircraft; a central location for processing first responder data, including high-definition, high-spectral, infrared, and thermal imagery, as well as electronic signals through cell phones and Internet service, generated from the deployment of unmanned aircraft and unmanned systems by first responders during federal, state, and local government responses to emergencies, natural disasters, emergency preparedness, and law enforcement activities; training services; data management, data analysis, data interpretation, and information routing approximating a real-time basis; and a repository of data and best practices for first responders at federal, state, and local levels. (Economic Impact Committee)
1020 § 15	Receive annual report from the State Board of Higher Education on full-time equivalent position adjustments made. (Budget Section)
1020 § 16	Receive report from the Main Research Center regarding the status of the flooded lands study and spending related to the study. (Budget Section)
1020 § 17	Consider studying the feasibility of placing the Upper Great Plains Transportation Institute under the administrative authority of the Department of Transportation. If conducted, the study must identify potential efficiencies, potential issues, and current services or benefits provided to the Upper Great Plains Transportation Institute by North Dakota State University. (Transportation Committee)
1021 § 3	Receive a report from the Information Technology Department before July 1, 2016, on the findings of the consultant hired by the Health Information Technology Office to provide for a health data study. (Information Technology Committee)
1024 § 2	Receive a report by the Comprehensive Tobacco Control Advisory Committee and the State Department of Health by September 1, 2016, regarding grant expenditures, the granting process, and reporting requirements of the $500,000 grant, included in the funding appropriated in Section 1 of 2015 House Bill No. 1024. (Health Services Committee)
1025 § 4	Approve Department of Veterans' Affairs service dog program to assist veterans with posttraumatic stress disorder. (Budget Section)
1028 § 1	Shall study provisions of Century Code that relate to agriculture, for the purposes of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. (Agriculture and Natural Resources Committee)
1035 § 1	Consider continuing its ongoing study of the needs and challenges of the North Dakota health care delivery system. The study may include monitoring the implementation of the federal Affordable Care Act, examining Medicaid Expansion and Medicaid reform, reviewing any impact on rural access to primary health care and emergency services, making recommendations to maintain and enhance rural primary health care and emergency services, and considering the feasibility of developing a state-based plan for a health care model that will comply with federal health care reform in a manner that will provide high-quality access and affordable care for North Dakota citizens. The University of North Dakota School of Medicine and Health Sciences Advisory Council shall make periodic reports to the Legislative Management on the status of the biennial report developed pursuant to Section 15-52-04. (Health Care Reform Review Committee)
1036 § 1	Receive periodic reports from the State Department of Health on the status of the health professional assistance program study. Before July 1, 2016, the State Department of Health shall report to the Legislative Management on the outcome of the study, including presentation of recommended legislation. (Health Services Committee)
1037 § 1	Receive report by the Department of Human Services by July 1, 2016, on the outcome of the Medicaid and Medicaid Expansion cost-sharing provisions study and the associated legislative recommendations and related draft legislation. (Human Services Committee)
1046 § 1	Receive report from the Department of Human Services by July 1, 2016, on the use of the funds appropriated under Section 1 of 2015 House Bill No. 1046. (Human Services Committee)
1048 § 1	Receive reports from the Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, State Board of Psychologist Examiners, State Board of Medical Examiners, and North Dakota Marriage and Family Therapy Licensure Board on plans and any legislative changes necessary to implement those plans for administration and implementation of licensing and reciprocity standards for licensees. (Health Services Committee)

Bill or Resolution No.	Subject Matter (Committee)
1049 § 4	Receive report from the Board of Addiction Counseling Examiners by July 1, 2016, on the status of the periodic evaluation of the initial licensure coursework requirements and clinical training requirements. (Health Services Committee)
1073 § 1	Consider studying required motor vehicle insurance. (Transportation Committee)
1081 § 5	Shall study Game and Fish Department licenses provided to entities for the purpose of fundraising. (Agriculture and Natural Resources Committee)
1083 § 1	Shall study the statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies as a condition of the receipt of federal funding to determine whether there are viable options to meet the needs of our state without having the federal government's oversight and involvement, which state needs can be met if federal funding associated with undesirable regulation or excessive direct and indirect costs is refused, and whether the benefit of accepting certain federal funds outweighs the benefit of participation in the federal programs. (Government Finance Committee)
1085 § 1	Receive a report by the Office of Management and Budget by October 15 of each even-numbered year, regarding the reports received by the Office of Management and Budget from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, a plan to operate the state agency when federal funds are reduced by 5 percent or more of the total federal funds the state agency receives. (Government Finance Committee)
1095 § 4	Shall assign to the Water Topics Overview Committee the responsibility of studying the use of quick take in eminent domain by water resource districts. The study must include input from stakeholders, including the State Water Commission, water resource districts, and landowners. (Water Topics Overview Committee)
1111 § 15	Receive report from the Department of Human Services before July 1, 2016, regarding the number of revoked obligor driver's licenses, the duration and effectiveness of revocations, including a comparison of the state's driver's license revocation with other rural states, and shall present a specific proposal that may limit the use of revocation of driver's licenses as a tool of enforcement. (Judiciary Committee)
1165 § 1	Study, in conjunction with representatives of the executive and judicial branches and other stakeholders, justice reinvestment reforms. The Legislative Management shall participate with representatives of the executive and judicial branches and other stakeholders such as judges, prosecutors, defense attorneys, victims' advocates, corrections staff, law enforcement agencies, and service providers to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. The Legislative Management shall cooperate with representatives of the executive and judicial branches to seek technical assistance as appropriate from the United States Bureau of Justice Assistance, The PEW Charitable Trusts, and the Council of State Governments' Justice Center to conduct the reform initiative. (Incarceration Issues Committee)
1176 § 4	Receive report from Department of Transportation on the use of one-time funding appropriated in Section 4 of 2015 House Bill No. 1176, including the amounts distributed to each county, the amounts spent to date, and the amounts anticipated to be continued into the 2017-19 biennium. (Budget Section)
1176 § 5	Receive a report from the Commissioner of the Board of University and School Lands on the use of the funding provided in Section 5 of 2015 House Bill No. 1176, including the amounts awarded, the amounts spent to date, and the amounts anticipated to be continued into the 2017-19 biennium. (Budget Section)
1176 § 6	Consider studying the oil and gas tax revenue allocation formulas. The study must include consideration of current and historical allocations to political subdivisions and the appropriate level of oil and gas tax revenue allocations to political subdivisions based on infrastructure and other needs. (Energy Development and Transmission Committee)
1279 § 1	Consider studying family caregiver supports and services. The study must identify policies, resources, and programs available for family caregivers and encourage additional innovative and creative means to support family caregivers so that they are able to continue to provide in-home support for older adults. The study must include input from stakeholders, including representatives of hospitals, social and clinical providers, advocacy organizations, tribal government, state and local agencies and institutions, and caregivers in this state. The study committee may receive testimony on the needs of family caregivers, including designation of caregivers, training, respite services, medical leave policies, and delegation of tasks to nonmedical aides. The study must include an inventory of the resources available to family caregivers and may make any recommendations for administrative actions to support family caregivers. The Legislative Management may contract for consulting and coordination of study services. (Human Services Committee)
1302 § 1	Consider studying voter registration and policies to implement a system of voter registration, including provisions necessary to allow same day voter registration. (Judiciary Committee)
1330 § 1	Receive report from the Secretary of State certifying that the information technology components of the electronic filing system are ready for implementation before August 1, 2016. (Information Technology Committee)

Bill or Resolution No.	Subject Matter (Committee)
1358 § 8	Receive report from the Energy and Environmental Research Center by December 1, 2015, regarding recommendations on existing regulations on construction and monitoring of crude oil and produced water pipelines, determine the feasibility and cost-effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems. (Energy Development and Transmission Committee)
1377 § 5	Shall study truck permitting systems in oil and gas producing counties. The study must review the North Dakota Association of Oil and Gas Producing Counties' uniform county truck permit program, including the system's integration with the Highway Patrol's online electronic truck permitting and routing system and the communications between county representatives and industry representatives regarding road conditions. The study must evaluate the appropriateness of additional fees assessed by the board of county commissioners and other local authorities to the oil and gas industry related to additional road permitting fees and analyze other relevant data regarding uniform truck permitting fees and procedures. The study must include input from representatives of the North Dakota Petroleum Council, representatives of the North Dakota Association of Oil and Gas Producing Counties, and other interested persons. (Transportation Committee)
1378 § 1	Shall study the proposed and final federal rules issued by the federal Health and Human Services Department relating to the essential health benefits under the federal Affordable Care Act. Specifically, the study must include a review of the rules relating to the state's ability to participate in defining the state-based essential health benefits package for plan years 2017 and beyond, how the state may be authorized to select a benchmark plan for plan years 2017 and beyond, and the deadlines related to these rules and related decisions. (Health Care Reform Review Committee)
1389 § 1	Consider studying issues relating to verification of citizenship status for the purpose of voting, including absentee and mail ballot voting. (Judiciary Committee)
1401 § 1	Consider studying sales and use taxation application for purchases by contractors on behalf of an exempt entity. (Political Subdivision Taxation Committee)
1416 § 3	Receive report from Workforce Safety and Insurance before August 1, 2016, on whether there is an industry interest in using safety programs under NDCC Section 65-03-04 to provide grants to an industry association to provide alcohol server training to employees of bars and restaurants that serve alcohol in order to address workplace safety and public safety. (Workers' Compensation Review Committee)
2001 § 3	Receive report from the Governor's office regarding the source, amount, and purpose of federal or other funds received by the Governor's office. (Budget Section)
2003 § 3	Receive report from the Office of Management and Budget in September 2015 and September 2016, regarding the amount of salary savings used to reduce funding needed from the general fund and to report on the number and duration of vacant full-time equivalent positions in the Attorney General's office. (Budget Section)
2003 § 13	Receive a report from the Attorney General by September 30, 2016, regarding any fees charged to a campus in excess of the campus assessments listed in Section 13 of 2015 Senate Bill No. 2003 for legal fees charged by the Attorney General. (Budget Section)
2012 § 3	Receive report from the Department of Human Services after June 30, 2016, any transfers made in excess of $50,000. (Budget Section)
2012 § 14	Receive a report from the Department of Human Services regarding development activities of the developmental disabilities system reimbursement project. (Human Services Committee)
2012 § 19	Receive report from a statewide family-controlled parent-to-parent support organization receiving a grant under Section 19 of 2015 Senate Bill No. 2012, on the use of grant funds. (Human Services Committee)
2012 § 20	Receive report from a statewide family-to-family health information and education organization receiving a grant under Section 20 of 2015 Senate Bill No. 2012, on the use of grant funds. (Human Services Committee)
2012 § 23	Receive report from the Department of Human Services regarding the adult protective services program, including the effectiveness of the program, information on services and outcomes, and funding by human service region and in total. (Human Services Committee)
2012 § 24	Receive report from the Department of Human Services on its quarterly behavioral health services reports. (Human Services Committee)
2015 § 4	Receive report from the Office of Management and Budget regarding its statewide plan and any appropriation authority transferred from the targeted market equity pool. (Government Finance Committee)
2015 § 5	Receive report from the Office of Management and Budget regarding distributions from the energy development impact funding pool and each agency receiving a distribution from the energy impact funding pool regarding its plan to discontinue energy impact adjustments for employees at the end of the biennium beginning July 1, 2015, and ending June 30, 2017. (Government Finance Committee)
2015 § 8	Receive report from State Board of Higher Education regarding the status of the Valley City State University fine arts building project. (Budget Section)

Bill or Resolution No.	Subject Matter (Committee)
2015 § 8	Receive certification from the State Board of Higher Education stating that the Dunbar Hall project conforms to the North Dakota University System campus master plan and space utilization study, contingent upon general fund revenues for the period beginning July 1, 2015, and ending December 31, 2016, exceeding the 2015 legislative estimates. (Budget Section)
2015 § 10	Receive periodic reports from the State Court Administrator regarding the status of the facility space expansion authorized under 2015 House Bill No. 1002. (Legislative Procedure and Arrangements Committee)
2015 § 40	Shall study the functions of the Budget Section. The study must review the 85 duties and studies assigned to the Budget Section, including the need to continue the duties and the ability of the Budget Section to authorize financial decisions, including full-time equivalent positions, North Dakota University System building projects, and project scope changes. (Government Finance Committee)
2015 § 41	Consider studying special transportation funding distributions to political subdivisions. The study must review distribution methods, including the feasibility and desirability of using Upper Great Plains Transportation Institute needs studies, county major collector miles, or a combination of both, if there are future special transportation funding distributions to political subdivisions, and must review options to ensure counties are reporting information consistently. The Legislative Management shall consider methods to ensure that road projects in each county are properly coordinated with state road projects and projects in adjacent counties. The study must also review the use of special transportation funding in comparison to the Legislative Assembly's intent. (Transportation Committee)
2015 § 42	Shall study the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques, including the use of carbon dioxide, the timeline for implementing the techniques, and the estimated future annual economic impact, to evaluate existing and alternative tax incentives and recommend tax incentives that under current and foreseeable conditions, and within different oil formations, would best serve the interests of the state, political subdivisions, and fossil fuel energy production industries. (Taxation Committee)
2020 § 5	Approve additional amounts from the resources trust fund and water development trust fund which become available to the State Water Commission for the purpose of defraying the expenses of that agency. (Budget Section)
2020 § 8	Approve transfers by the State Water Commission for project funding designations in Section 17 of 2015 Senate Bill No. 2020. (Budget Section)
2020 § 14	Receive reports from the Garrison Diversion Conservancy District to review its progress in planning and designing the Red River Valley Water Supply Project. (Water Topics Overview Committee)
2020 § 18	Receive notification from the State Water Commission of funding transfers authorized in Section 18 of 2015 Senate Bill No. 2020 and approved by the Budget Section. (Water Topics Overview Committee)
2020 § 22	Shall study options available for providing a sustainable water supply to central and eastern North Dakota. (Water Topics Overview Committee)
2020 § 26	Receive report from the State Water Commission every six months during the 2015-16 interim regarding any changes made to the State Water Commission priority projects list presented to the 64th Legislative Assembly for the biennium beginning July 1, 2015, and ending June 30, 2017. (Water Topics Overview Committee)
2020 § 27	Receive report from the F-M Area Diversion Authority Board biannually regarding an update on congressional authorization of the diversion project and the status of the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and the project budget. The MNDak Upstream Coalition shall report biannually regarding an update on the impacts of the Fargo flood control project and mitigation efforts, alternatives, and costs. (Water Topics Overview Committee)
2020 § 30	Approve State Water Commission revenue bonds. (Budget Section)
2031 § 28	Receive report from the Superintendent of Public Instruction before July 1, 2016, regarding findings and recommendations of the School District Reporting Review Committee. (Education Committee)

Bill or Resolution No.	Subject Matter (Committee)
2031 § 29	Shall study content standards and assessments. The study must provide for a review of the content standards applicable to all grade levels in this state, from kindergarten through grade 12, in the areas of English language arts and mathematics, compare the content standards of this state to those of other states that are recognized as having high academic achievement levels, and review the standards development process. The study must review the purpose of general and alternate student assessments, examine the availability of existing and proposed assessment models, and examine the assessments utilized by other states that are recognized as having high academic achievement levels. The study must review those sections of the Elementary and Secondary Education Act [20 U.S.C. 6301, et seq.] that address standards, assessments, accountability, and local flexibility, and any recent pertinent regulatory changes or policy statements issued by the United States Department of Education. The Legislative Council may seek assistance from individuals who are content specialists at the higher education level, individuals who are content and assessment specialists at the elementary or high school level, and other professionals, as necessary, to complete the directives of this section. (Education Committee)
2031 § 36	Consider studying the nature and scope of career and technical education opportunities available to students in this state, the manner in which such opportunities are financially supported, and the manner in which such opportunities are monitored to ensure that they provide students with 21st century technical skills that are aligned to industry standards, in addition to providing appropriate academic foundations. (Education Committee)
2037 § 5	Receive report from the Public Service Commission at least once each year of the 2015-16 interim, on the most current information available on the status of retail sales of electricity in the state meeting or exceeding the state renewable and recycled energy objective established in NDCC Section 49-02-28 and a comparison of the amount of renewable and recycled energy produced in the state with the amount sold at retail in the state. (Energy Development and Transmission Committee)
2048 § 4	Receive report from the Department of Human Services before July 1, 2016, regarding the rules adopted to establish and administer the voucher system to assist in the payment of addiction treatment services provided by private licensed substance abuse treatment programs. (Human Services Committee)
2048 § 5	Receive report from the Department of Public Instruction before July 1, 2016, on mental health training provided by school districts. (Human Services Committee)
2048 § 7	Consider studying behavioral health needs. The study must include consideration of behavioral health needs of youth and adults and access, availability, and delivery of services. The study must include a review of services related to autism spectrum disorder. The study must include input from stakeholders, including representatives of law enforcement, social and clinical service providers, education, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court, tribal government, and state and local agencies and institutions. The study must also include the monitoring and reviewing of strategies to improve behavioral health services implemented pursuant to legislation enacted by the 64th Legislative Assembly and other behavioral health-related recommendations presented to the 2013-14 interim Human Services Committee. (Human Services Committee)
2049 § 1	Receive report from the Department of Human Services before August 1, 2016, on the outcome of the study of statutory references to mental health professionals to determine whether changes in the law may help to more fully utilize these professionals within their scope of practice, as it relates to the responsibilities of the Department of Human Services to provide services or license facilities together with any recommendations. (Human Services Committee)
2057 § 1	Shall study the analysis of economic development tax incentives as provided in NDCC Section 54-35-26. (Political Subdivision Taxation Committee)
2103 § 2	Receive report from the Department of Transportation on the use of one-time funding appropriated in Section 2 of 2015 Senate Bill No. 2103, including the amounts distributed to each county, the amounts spent to date, and the amounts anticipated to be continued into the 2017-19 biennium. (Budget Section)
2150 § 2	Receive report from the State Board of Higher Education before July 1, 2016, on the status of the implementation of the student and student organization disciplinary proceedings uniform procedure. (Higher Education Committee)
2151 § 6	Receive report from the Superintendent of Public Instruction by August 1, 2016, regarding the implementation of a uniform system for the accounting, budgeting, and reporting of data by an early childhood education provider who has received a grant distributed in accordance with Section 3 of 2015 Senate Bill No. 2151. (Education Committee)
2167 § 1	Consider studying the One-Call excavation notice system. (Economic Impact Committee)

Bill or Resolution No.	Subject Matter (Committee)
2206 § 12	Shall conduct a study to develop a proposed transition plan for transferring the costs of operating social services programs from county property tax levies to general fund appropriations. A proposed transition plan must include a timeline for the major milestones of the transition plan, considerations for the transition, estimated costs, a plan to require a property tax reduction for the amount of the budgeted savings brought about by the transfer of county social services costs to the state, a plan resulting in the elimination of the county social services levy under NDCC Section 50-06.2-05, and potential legislation to implement recommended changes. The study must include consideration of the feasibility of implementing the proposed transition plan. (Political Subdivision Taxation Committee)
2234 § 1	Receive report from the Department of Human Services by January 1, 2016, regarding eligibility for developmental disability waivers. (Human Services Committee)
2276 § 1	Consider studying issues related to providing natural gas service to underserved communities in this state from available natural gas not otherwise committed in main gas transmission lines near those underserved communities. (Economic Impact Committee)
2304 § 1	Upon request, receive report from the Friends of the Residence regarding the fundraising plans of the task force and the progress of fundraising efforts for a new Governor's residence. (Legislative Procedure and Arrangements Committee)
2304 § 3	Approve the Office of Management and Budget to spend any donated funds over $1 million for upgraded fixtures and furniture for the new Governor's residence. (Budget Section)
2318 § 4	Shall study the oil extraction tax exemption available for incremental production from a tertiary recovery project that uses carbon dioxide. The study must include consideration of the potential benefits and costs to industry, the state, and the environment of using carbon dioxide enhanced recovery methods. The Legislative Management shall secure assistance from the Energy and Environmental Research Center to analyze potential future usage of carbon dioxide in oil recovery operations in the Bakken and Three Forks Formations, the potential production and environmental benefits of that usage for energy industries in this state, the economic conditions in which that usage is feasible for oil producers, and the estimated fiscal effect of that usage for the state and political subdivisions. (Taxation Committee)
2343 § 1	Receive report from the Industrial Commission on the fiscal impact or estimated fiscal effect on the state in excess of $20 million in a biennium of the effect of any order, regulation, or policy of the Industrial Commission to implement the provisions of NDCC Chapter 38-08, on state revenues and expenditures, including any effect on the funds of the Industrial Commission. (Budget Section)
2367 § 1	Receive report from the Task Force on Substance Exposed Newborns before July 1, 2016, on its findings and recommendations and any proposed legislation necessary to implement the recommendations. (Judiciary Committee)
2372 § 1	Consider studying the impacts and costs of the Environmental Protection Agency regulations on carbon dioxide emissions for new and existing electric generation units. The study must include the regulations' estimated compliance costs on the industry, estimated impacts on regional grid reliability, estimated economic impact to ratepayers in this state, and the feasibility of implementing the regulations, including the proposed timeline. The study must also include an update on the status of technologies related to reduction of carbon dioxide emissions. The Legislative Management may consult with the Lignite Energy Council, State Department of Health, Public Service Commission, Attorney General, and other state and federal agencies as needed. (Energy Development and Transmission Committee)
3001	Hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress. (Budget Section)
3003	Study state contributions for state employee health insurance premiums, including the feasibility and desirability of establishing a maximum state contribution for state employee health insurance premiums and the effect of losing the state's grandfathered status under the federal Affordable Care Act. (Health Care Reform Review Committee)
3004	Continue to study of medicolegal death investigation in the state and how current best practices, including authorization, reporting, training, certification, and the use of information technology and toxicology, can improve death investigation systems in the state. (Health Services Committee)
3006	Study the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts. (Tribal and State Relations Committee)
3012	Study the registration requirements for offenders against children and sex offenders under Section 12.1-32-15. (Judiciary Committee)
3020	Study the impact on owners of land that has been inundated by rising waters in Devils Lake and Stump Lake. (Water Topics Overview Committee)

Bill or Resolution No.	Subject Matter (Committee)
3046	Study public higher education in North Dakota for the purpose of developing and implementing a governance model that articulates the role and function of the State Board of Higher Education, and that of its Chairman and other members, including the board's objectives and the monitoring responsibilities necessary to ensure that its objectives are achieved; the role and function of the Commissioner of Higher Education, including the Commissioner's relationship with the board, the Commissioner's responsibility for implementing the board's objectives, and for meeting the board's expectations regarding organizational performance; and the role and function of each institution's president, including the authority and responsibility to supervise and direct the efficient operation of the institution, to execute all directives from the Commissioner of Higher Education, and to report directly to the Commissioner regarding the operation and management of the institution, and the execution of the directives. (Higher Education Committee)
3049	Study issues related to employment restrictions in public assistance programs. (Health Services Committee)
3052	Receive report from the State Board of Higher Education before July 1, 2016, regarding the policies, procedures, supports, and services available to all public institutions of higher education in the state regarding sexual assault and related incidents. (Higher Education Committee)
4004	Continue to study of dental services in the state, including the effectiveness of case management services and the state infrastructure necessary to cost-effectively use mid-level providers to improve access to services and address dental service provider shortages in underserved areas of the state. (Health Services Committee)
4018	Study the use of seclusion and restraint procedures in schools. (Education Committee)
	Statutory and constitutional revision. (Judiciary Committee)
	Review legislative rules. (Legislative Procedure and Arrangements Committee)
	Review and report on budget data prepared by the Director of the Budget. (Budget Section)
	Receive a report from the Legislative Council staff in the fall of 2016 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium. (Budget Section)
	Receive report from a representative of a hub city annually on the use of funding received from allocations from the oil and gas gross production tax under NDCC Section 57-51-15. (Budget Section)
	Review state budget information, including monitoring the status of revenues and appropriations. (Government Finance Committee)

NDCC Citation	Subject Matter (Committee)
4-01-24	Receive report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities. (Agriculture and Natural Resources Committee)
4-02.1-18	Receive annual audit report from the State Fair Association. (Legislative Audit and Fiscal Review Committee)
4-05.1-05	Receive annual report from the North Dakota State University (NDSU) Main Research Center on full-time equivalent position adjustments made. (Budget Section)
4-05.1-19(8)	Receive report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures. (Agriculture and Natural Resources Committee)
4-05.1-19(10)	Receive status report from the State Board of Agricultural Research and Education. (Budget Section)
4-08-10	Receive annual report from the NDSU Extension Service on full-time equivalent position adjustments made. (Budget Section)
4-24-10	Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees. (Legislative Procedure and Arrangements Committee)
4-35.2-04	Determine when the Agriculture Commissioner must submit a biennial report to a joint meeting of the House of Representatives and Senate Agriculture Committees on the status of the pesticide container disposal program. (Legislative Procedure and Arrangements Committee)
4.1-72-08	Receive electronic copy of audit report from the North Dakota Stockmen's Association at least once every two years. (Legislative Audit and Fiscal Review Committee)
10-19.1-152	Receive annual audit report from a corporation receiving an ethanol or methanol production subsidy. (Legislative Audit and Fiscal Review Committee)
15-03-04	Approve any purchase of commercial or residential property by the Board of University and School Lands as sole owner. (Budget Section)
15-10-12.1	Authorize the State Board of Higher Education to authorize construction of any building, or campus improvements and building maintenance of more than $385,000, if financed by donations. (Budget Section)

NDCC Citation	Subject Matter (Committee)
15-10-12.3	Receive biennial report from each institution under the control of the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used which details the source of all funds used in the project. (Budget Section)
15-10-44	Receive report from the State Board of Higher Education, on request, regarding higher education information technology planning, services, and major projects. (Information Technology Committee)
15-10-47	Receive reports from the Office of Management and Budget regarding the State Board of Higher Education's project variance semiannual reports regarding construction projects valued at more than $250,000. (Budget Section)
15-10-59	Receive an annual report regarding the number of North Dakota academic scholarships and career and technical education scholarships provided and demographic information pertaining to the recipients. (Higher Education Committee)
15-39.1-05.2	Receive notice from the Board of Trustees of the Teachers' Fund for Retirement of necessary or desirable changes in statutes relating to the administration of the Teachers' Fund for Retirement Fund. (Employee Benefits Programs Committee)
15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate. (Employee Benefits Programs Committee)
15-39.1-35	Approve terminology adopted by the Public Employees Retirement System Board for Teachers' Fund for Retirement provisions to comply with applicable federal statutes or rules. (Employee Benefits Programs Committee)
15-52-04	Receive biennial report and recommendations from the University of North Dakota School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the University of North Dakota School of Medicine and Health Sciences. (Higher Education Committee)
15-69-05	Receive annual audits from a center of excellence that is awarded funds under NDCC Chapter 15-69 on the funds distributed to the center, until completion of four years following the final distribution of funds. (Budget Section)
15-70-05	Receive report from any tribally-controlled community college receiving a grant under NDCC Chapter 15-70 detailing the expenditures of the grant funds, a copy of the institution's latest audit report, and documentation of the enrollment status of students. (Higher Education Committee)
15.1-02-09	Receive annual report from the Superintendent of Public Instruction by the end of February on the financial condition of school districts. (Education Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports. (Education Committee)
15.1-06-08	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of any rule governing the accreditation of schools. (Education Committee)
15.1-06-08.1	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of NDCC Section 15.1-21-03. (Education Committee)
15.1-13-36	Receive report from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board. (Education Committee)
15.1-21-10	Receive from the Superintendent of Public Instruction the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide. (Education Committee)
17-05-13	Receive written report from the North Dakota Transmission Authority each biennium. (Energy Development and Transmission Committee)
17-07-01	Receive biennial report from the Energy Policy Commission and its recommendations to the state energy policy. (Energy Development and Transmission Committee)
18-04-02	Receive biennial report from the State Fire Marshal summarizing the expenditures by certified fire departments and districts of funds received from the insurance tax distribution fund and reserve fund balances. (Budget Section)
18-11-15	Receive notice from firefighters relief associations of the association's intent to provide a substitution monthly service pension. (Employee Benefits Programs Committee)
18-13-02(6)	Receive report from the State Fire Marshal each interim on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes. (Health Services Committee)
19-03.1-44	Receive report from the Attorney General before July 1 of every even-numbered year on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. (Judiciary Committee)

NDCC Citation	Subject Matter (Committee)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by the Director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding $10,000 by the Game and Fish Department. (Budget Section)
20.1-02-16.1	Authorize the Game and Fish Department to spend money in the game and fish fund if the balance would be reduced below $15 million. (Budget Section)
21-10-11	Develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the State Investment Board. (Legacy and Budget Stabilization Fund Advisory Board)
21-10-11	Receive at least semiannual reports from the Legacy and Budget Stabilization Fund Advisory Board. (Budget Section)
23-01-40	Receive report from the Department of Human Services, State Department of Health, Indian Affairs Commission, and Public Employees Retirement System before June 1 of each even-numbered year on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes. (Health Services Committee)
23-43-04	Receive report by the State Department of Health before June 1 of each even-numbered year, regarding progress made toward the recommendations provided in NDCC Section 23-43-04 and any recommendations for future legislation. (Health Services Committee)
25-04-02.2	Authorize the Life Skills and Transition Center to provide services under contract with a governmental or nongovernmental person. (Budget Section)
25-04-17	Receive report on writeoff of patients' accounts at the Life Skills and Transition Center. (Legislative Audit and Fiscal Review Committee)
26.1-50-05	Receive annual audited financial statement and report from the North Dakota low-risk incentive fund. (Legislative Audit and Fiscal Review Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules. (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking. (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking. (Administrative Rules Committee)
28-32-18	Determine whether an administrative rule is void. (Administrative Rules Committee)
28-32-42	Receive notice of appeal of an administrative agency's rulemaking action. (Administrative Rules Committee)
37-17.1-27	Approve, with the Emergency Commission, use of the state disaster relief fund to provide the required state share of funding for expenses associated with presidentially declared and governor-declared disasters in the state. (Budget Section)
38-08-04.5	Receive report from the Industrial Commission each biennium on the balance of the abandoned oil and gas well plugging and site reclamation fund and expenditures from the fund. (Budget Section)
38-22-15	Receive, along with the Governor, report from the Industrial Commission in December 2014 and every four years thereafter discussing whether the amount in the carbon dioxide storage facility trust fund and fees being paid into the fund are sufficient to satisfy the fund's objectives. (Energy Development and Transmission Committee)
39-03.1-29, 54-52-23, 54-52.1-08.2	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements. (Employee Benefits Programs Committee)
39-34-05	Receive report from the Department of Transportation regarding information collected from transportation network companies during each biennium. (Transportation Committee)
40-23-22.1	Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes. (Budget Section)
40-63-03	Receive annual reports from the Division of Community Services on renaissance zone progress. (Political Subdivision Taxation Committee)
40-63-03(10)	Receive annual report from the Department of Commerce compiling reports from cities that have a renaissance zone included in a tax increment financing district. (Political Subdivision Taxation Committee)
40-63-07(9)	Receive annual report from the Division of Community Services on conclusions of annual audits of renaissance fund organizations. (Budget Section)
45-10.2-115	Receive annual audit report from a limited partnership receiving an ethanol alcohol or methanol production subsidy. (Legislative Audit and Fiscal Review Committee)
46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws. (Legislative Procedure and Arrangements Committee)

NDCC Citation	Subject Matter (Committee)
47-30.1-24.1	Receive report from the Commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency. (Budget Section)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency. (Budget Section)
48-01.2-25	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly, but if within six months before or three months after a regular session the authorization is limited to changes in project scope and related expenditures resulting from an unforeseen emergency event. (Budget Section)
50-06.1-16	Receive annual report from the Committee on Employment of People with Disabilities detailing the committee's activities, goals, and progress in reaching these goals, and strategies and policies that can help the committee to realize its goals. (Government Finance Committee)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts. (Legislative Audit and Fiscal Review Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program. (Budget Section)
50-06-31	Receive report from the Department of Human Services before March 1 of each even-numbered year on services provided by the Department of Corrections and Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the Executive Director of the Department of Human Services. (Judiciary Committee)
50-06-32	Receive autism spectrum disorder plan from the Autism Spectrum Disorder Task Force before July 1, 2010, and an annual status report thereafter. (Human Services Committee)
50-06-32.1	Receive report from the Department of Human Services regarding the autism spectrum disorder program pilot project. (Human Services Committee)
50-29-02	Receive annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan. (Human Services Committee)
52-02-17	Receive report from Job Service North Dakota before March 1 of each year on the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years. (Budget Section)
52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota. (Legislative Audit and Fiscal Review Committee)
53-06.2-04	Receive biennial report from the Racing Commission and recommendations for legislation which address the issue of the liability of charitable organizations that receive and disburse money handled through account wagering. (Judiciary Committee)
53-12.1-03	Receive report, as requested, from the Director of the North Dakota Lottery regarding the operation of the lottery. (Judiciary Committee)
54-03-20	Establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session. (Legislative Procedure and Arrangements Committee)
54-03-26	Determine the fee payable by legislators for use of personal computers. (Legislative Procedure and Arrangements Committee)
54-03-26	Establish policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council. (Legislative Procedure and Arrangements Committee)
54-03-28	Contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment. (Health Services Committee)
54-03-32	Review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. (Judiciary Committee)
54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel. (Legislative Procedure and Arrangements Committee)
54-06-30	Receive report from Human Resource Management Services on the number of employees receiving bonuses above the 25 percent limitation. (Budget Section)
54-06-31	Receive periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. (Employee Benefits Programs Committee)
54-06-32	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing service awards to employees in the classified service. (Administrative Rules Committee)

NDCC Citation	Subject Matter (Committee)
54-06-32	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing service awards to employees in the classified service. (Employee Benefits Programs Committee)
54-06-33	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing state agencies to provide employer-paid costs of training or educational courses to employees in the classified service. (Administrative Rules Committee)
54-06-33	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. (Employee Benefits Programs Committee)
54-06-34	Receive biennial report from the Office of Management and Budget summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. (Employee Benefits Programs Committee)
54-06-37	Approve purchase or lease of aircraft by a state agency or entity of state government, other than the Adjutant General or the University of North Dakota School of Aviation, if the Legislative Assembly is not in session. (Budget Section)
54-10-01	Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency. (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits of state agencies. (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine necessary performance audits by the State Auditor. (Legislative Audit and Fiscal Review Committee)
54-10-13	Determine when the State Auditor is to perform audits of political subdivisions. (Legislative Audit and Fiscal Review Committee)
54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision. (Legislative Audit and Fiscal Review Committee)
54-10-28, 54-35-15.4	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews. (Information Technology Committee)
54-11-01	Receive report from the State Treasurer, within 90 days of the beginning of each fiscal year, regarding all warrants and checks outstanding for more than 90 days and less than three years. (Budget Section)
54-14-03.1	Receive reports on fiscal irregularities. (Budget Section)
54-16-04(1)	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly. (Budget Section)
54-16-04(2)	Approve transfers exceeding $50,000 from one fund or line item to another unless necessary to comply with a court order or to avoid imminent threat to safety or imminent financial loss to the state. (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's acceptance of federal funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's expenditure of federal funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.1(4)	Approve, with the Emergency Commission, acceptance of any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session for deposit in a special fund until the Legislative Assembly appropriates the funds. (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's acceptance of funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's expenditure of funds in excess of $50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.3	Approve, on the advice of the Office of Management and Budget and the recommendation of the Emergency Commission, a state officer to employ full-time equivalent positions in addition to those authorized by the Legislative Assembly. (Budget Section)
54-16-09	Approve Emergency Commission authorization of transfer of spending authority from the state contingencies appropriation in excess of $50,000 if the transfer is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)

NDCC Citation	Subject Matter (Committee)
54-17-40	Receive report from the Housing Finance Agency quarterly on the progress being made to reduce the overall number of housing units owned, master leased, or subsidized by cities, counties, school districts, or other employers of essential service workers. (Budget Section)
54-17.7-13	Receive biennial report from the North Dakota Pipeline Authority on its activities. (Energy Development and Transmission Committee)
54-17.8-07	Receive biennial report from the North Dakota Outdoor Heritage Advisory Board. (Budget Section)
54-23.3-09	Receive report from the Director of the Department of Corrections and Rehabilitation on any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of $100,000 during a biennium. (Budget Section)
54-27-22	Approve use of the preliminary planning revolving fund. (Budget Section)
54-27-23	Approve use of cashflow financing. (Budget Section)
54-27-27	Receive report from the Office of Management and Budget at each meeting of the Budget Section regarding the 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. (Budget Section)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the general fund to offset projected decrease in general fund revenues. (Budget Section)
54-35-02	Review uniform laws recommended by the Commission on Uniform State Laws. (Judiciary Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall. (Legislative Procedure and Arrangements Committee)
54-35-02	Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents. (Legislative Procedure and Arrangements Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor. (Legislative Audit and Fiscal Review Committee)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans. (Employee Benefits Programs Committee)
54-35-02.6	Study and review administrative rules and related statutes. (Administrative Rules Committee)
54-35-02.7	Legislative overview of water-related topics and related matters and any necessary discussions with adjacent states on water-related topics. (Water Topics Overview Committee)
54-35-02.7	Legislative overview of the Garrison Diversion Project. (Water Topics Overview Committee)
54-35-02.7	Report on the committee's project prioritization process, provide updates on allocated program expenditures, and report on the fund balances of projects, grants, and contracts. (Water Topics Overview Committee)
54-35-02.8	As the Legislative Ethics Committee, consider or prepare a legislative code of ethics. (Legislative Procedure and Arrangements Committee)
54-35-11	Make arrangements for legislative session. (Legislative Procedure and Arrangements Committee)
54-35-15.2	Receive a project startup report and a project closeout report from the affected legislative or judicial branch agency regarding any information technology project with a total cost of $500,000 or more. (Information Technology Committee)
54-35-15.2	Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues. (Information Technology Committee)
54-35-15.2	Receive and review information received from the State Board of Higher Education relating to higher education information technology projects with a total cost of $500,000 and receive and review information from the department regarding any information technology project of an executive branch agency with a total cost of between $100,000 and $500,000. (Information Technology Committee)
54-35-15.2	Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects. (Information Technology Committee)
54-35-15.2	Review the activities of the Information Technology Department, statewide information technology standards, the statewide information technology plan, and major information technology projects; review cost-benefit analyses of major projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition. (Information Technology Committee)
54-35-18	Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. (Energy Development and Transmission Committee)

NDCC Citation	Subject Matter (Committee)
54-35-22	Review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. (Workers' Compensation Review Committee)
54-35-23	Study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. (Tribal and State Relations Committee)
54-35-24	Study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. (Commission on Alternatives to Incarceration)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority. (Government Finance Committee)
54-44-04(23)	Receive report from the Director of the Office of Management and Budget on the status of tobacco settlement funds and related information. (Budget Section)
54-44-16	Receive report from the Office of Management and Budget regarding any purchase of oil put options by the State Investment Board to offset reduced general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. (Budget Section)
54-44.1-07	Prescribe form of budget information prepared by the Director of the Budget. (Budget Section)
54-44.1-12.1	Object to any allotment by the Director of the Budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent. (Budget Section)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action. (Budget Section)
54-44.4-02.2	Receive report from the Office of Management and Budget in December of even-numbered years regarding commodities and services exempted from state procurement requirements. (Budget Section)
54-56-03	Approve grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee to children's services organizations and programs. (Budget Section)
54-59-02.1	Receive from the Chief Information Officer recommendations of the department's advisory committee regarding major software projects for consideration and the drafting of appropriate legislation to implement the recommendations. (Information Technology Committee)
54-59-05(4)	Approve execution by the Information Technology Department of proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of $1 million. (Budget Section)
54-59-12	Receive report from the Chief Information Officer regarding the coordination of services with political subdivisions and from the Chief Information Officer and the Chief Information Officer of the North Dakota University System regarding coordination of information technology between the Information Technology Department and higher education. (Information Technology Committee)
54-59-19	Receive annual report from the Information Technology Department. (Information Technology Committee)
54-59-19	Receive summary of annual report from the Information Technology Department. (Budget Section)
54-59-36	Receive report from the Statewide Longitudinal Data System Committee regarding recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance. (Information Technology Committee)
54-60-03	Determine the standing committees that will receive the report from the Commissioner of Commerce on the department's goals and objectives, its long-term goals and objectives, and on commerce benchmarks. (Legislative Procedure and Arrangements Committee)
54-60-28	Receive report from the Department of Commerce semiannually regarding status of program to establish and administer an unmanned aircraft systems test site in cooperation with the University of North Dakota, the Aeronautics Commission, Adjutant General, and private parties appointed by the Governor. (Economic Impact Committee)
54-60.1-07	Receive the compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year. (Taxation Committee)
54-61-03	Receive annual report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices. (Judiciary Committee)
54-65-03	Receive annual audits from a center of research excellence receiving funds under NDCC Chapter 54-65 on funds distributed to the center. (Budget Section)
57-38-01.29	Receive report (for review) from the Tax Commissioner regarding any reduction the Tax Commissioner makes in the homestead property income tax credit. (Budget Section)
57-38-01.30	Approve any reduction the Tax Commissioner makes in the commercial property income tax credit. (Budget Section)

NDCC Citation	Subject Matter (Committee)
57-39.8-02	Receive annual report from the governing body of the Standing Rock Sioux Tribe of any agreement under NDCC Chapter 57-39.8. (Budget Section)
57-40.6-12	Receive report from the Emergency Services Communications Coordinating Committee by November 1 of each even-numbered year regarding the use of the assessed communications services fee revenue; and receive recommendation regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers. (Economic Impact Committee)
57-51-15	Receive report from the Tax Commissioner within 120 days after the end of each fiscal year from compiled reports from counties receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended. (Taxation Committee)
57-51.2-02	Receive report from tribal governing bodies annually regarding investment of oil and gas tax receipts in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry. (Budget Section)
57-51.2-04	Receive report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation. (Tribal and State Relations Committee)
57-60-02.1	Receive annual report from the operator of a coal conversion facility that receives a carbon dioxide capture credit for certain coal conversion facilities regarding the facility's carbon dioxide capture project. (Energy Development and Transmission Committee)
65-02-30	Receive report from the Director of Workforce Safety and Insurance, the Chairman of the Workforce Safety and Insurance Board of Directors, and the audit firm regarding the quadrennial performance evaluation of Workforce Safety and Insurance and select no more than four elements for inclusion in the performance evaluation. (Workers' Compensation Review Committee)
65-03-05	Receive biennial report from Workforce Safety and Insurance regarding compiled data relating to safety grants issued under NDCC Chapter 65-03. (Workers' Compensation Review Committee)
65-05.1-06.3	Receive annual report from Workforce Safety and Insurance which includes reports on pilot programs to assess alternative methods of providing rehabilitation services. (Workers' Compensation Review Committee)
65-06.2-09	Receive report from Workforce Safety and Insurance on recommendations based on a biennial safety review of Roughrider Industries work programs and a biennial performance review of the program of modified workers' compensation coverage by Workforce Safety and Insurance. (Workers' Compensation Review Committee)
65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workforce safety and insurance. (Budget Section)

2009 Session Laws Citation	Subject Matter (Committee)
Chapter 29 § 5	Administer appropriation for legislative wing equipment and improvements. (Legislative Procedure and Arrangements Committee)

2011 Session Laws Citation	Subject Matter (Committee)
Chapter 1 § 6	Administer appropriation for legislative committee room renovations and improvements. (Legislative Procedure and Arrangements Committee)

2013 Session Laws Citation	Subject Matter (Committee)
Chapter 46 § 6	Receive report from the Department of Corrections and Rehabilitation annually on the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing. (Budget Section)
Chapter 67 § 1	Approve conveyance of North Central Research Extension Center and Williston Research Extension Center property. (Budget Section)

LEGISLATIVE MANAGEMENT ASSIGNMENTS

The following table identifies additional assignments by the Legislative Management or the Chairman of the Legislative Management to interim committees.

Responsibility	Interim Committee
A review of North Dakota statutes that may be in conflict with the definition of marriage ruling from the United States Supreme Court in *Obergefell v. Hodges*, and to propose any appropriate changes for the Legislative Assembly to consider. (Judiciary Committee)	Judiciary Committee
Study the income tax reciprocity agreement between North Dakota and Montana, scheduled for renewal on January 1, 2016, including consideration of the number of individuals utilizing the agreement's optional provisions and the resulting fiscal impact on the income tax revenues of North Dakota and Montana. (Political Subdivision Taxation Committee)	Political Subdivision Taxation Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2015-16 interim under authority of Section 54-35-02. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Management.

Bill or Resolution No.	Subject Matter
1001 § 11	Consider studying the use of bonding to finance state building, road, and water construction projects. If conducted, the study must include consideration of the effect that financing state construction projects with existing oil revenue has had on both the construction industry and the oil and gas industry.
1004 § 8	Consider studying onsite sewage disposal in the state, including areas of the state lacking environmental programs to address onsite sewage disposal, lack of uniform standards for disposal, regulation authority, and the impact of onsite sewage disposal and waste management on industry and the public.
1009 § 3	Consider studying the maintenance and repair of state property and the source of funds to be used for maintenance and repair costs. The study must review current processes being used by state agencies to identify and address maintenance and repairs of state property and the appropriateness of the source of funds being used for these maintenance and repair projects.
1012 § 19	Consider studying short line railroad expansion, spurs, switches, or other infrastructure enhancements and the effect of short line railroads on reducing commercial traffic on the state highway system.
1012 § 20	Consider studying the potential effect high-efficiency vehicles may have on the revenue generated from motor vehicle registration fees, special fuels taxes, special fuels excise taxes, and gasoline and gasohol taxes.
1013 § 7	Consider studying progress on the passage of federal legislation to return excess lands to the operation of the Oahe Dam in Emmons and Morton Counties, and to the state of North Dakota pursuant to Section 1 of House Bill No. 1456, as approved by the 64th Legislative Assembly. The Legislative Management shall seek the input and assistance of representatives of Morton and Emmons Counties, as well as the Army Corp of Engineers, in advancing the study and developing recommendations to achieve the passage of federal legislation.
1035 § 2	Consider studying the feasibility and desirability of pursuing a behavioral health and addiction training initiative in response to concerns described in the behavioral health planning report prepared by Schulte Consulting, LLC, for the Legislative Management's 2013-14 Human Services Committee and in reports of the steering committee of the Behavioral Health Stakeholders Group. The study shall include exploration of opportunities for innovative public-private partnerships, and may include participation by public and private stakeholders, such as the University of North Dakota School of Medicine and Health Sciences and School of Law.
1056 § 3	Consider studying the feasibility and desirability of consolidating all political subdivision and school district elections with the statewide primary election and the holding of all special elections on other specified dates during any year. If the Legislative Management conducts the study, the Legislative Management shall seek input and participation from the Secretary of State; representatives of cities, counties, school districts, and other political subdivisions; and representatives of political parties.
1056 § 4	Consider studying statutory usage of various references to political subdivisions and the feasibility of differentiating references to political subdivisions based on whether the governing body is elected or appointed.

Bill or Resolution No.	Subject Matter
1057 § 7	Consider studying delivery and contents of property tax information to taxpayers when the property assessment has been determined by the assessor, when the budget hearing will be held for each taxing district in which the property is located, and when the property tax statement for the taxable year is delivered. The study must consider the feasibility and desirability of changes to the timing of events scheduled by law for the taxable year and must consider improvements to the transparency, administration, and understanding of the property tax system.
1065 § 1	Consider studying what, if any, current laws need to be changed to accommodate the introduction or testing of automated motor vehicles in North Dakota and any automated corridors affecting North Dakota.
1106 § 1	Consider studying issues related to criminal defendants who are veterans or who are currently serving in the armed forces, including whether additional treatment and sentencing options should be considered if a defendant is suspected to have posttraumatic stress disorder or other behavioral health conditions; whether the additional treatment and sentencing options should apply to both misdemeanor and felony offenses and, if applied to misdemeanor offenses, the impact those additional cases would have on the courts and the Department of Corrections and Rehabilitation; the point in the criminal proceeding at which the inquiry regarding the defendant's behavioral health condition should be made; what actions are being taken by other states' judicial and criminal justice systems to address similar issues regarding criminal defendants who are veterans or who are currently serving in the armed forces; and what steps the state needs to take to ensure that veterans and other armed forces personnel with posttraumatic stress disorder or other behavioral health conditions are best handled in the state's criminal justice system.
1151 § 7	Consider studying the provision of matching grants to institutions of higher education, as set forth in Sections 15-10-48 through 15-10-53, for the purposes of ensuring that the statutory parameters provide sufficient direction, provide flexibility to accommodate changing circumstances and needs, and ultimately enable the delivery of the greatest possible benefits to the students attending institutions of higher education in this state.
1168 § 1	Consider studying provisions of Century Code that relate to education, for the purposes of determining the requirements for school districts to demonstrate a decline in enrollment.
1182 § 3	Consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.
1184 § 1	Consider studying the practice of veterinary medicine in this state, including any statutory and regulatory requirements and limitations, and the appropriateness of such requirements and limitations with respect to small animal, large animal, and research-focused practices.
1188 § 1	Consider creating a task force to study issues related to school district boundaries, including the feasibility and desirability of maintaining existing boundaries; the parameters currently governing annexation, reorganization, and dissolution processes; and options for instituting boundary changes in the case of significant educational or financial impacts. A task force created under this section is governed by Senate Bill No. 2300, as approved by the 64th Legislative Assembly.
1215 § 1	Consider studying individual income tax credits available for qualified care expenses paid for the care of a qualifying family member.
1256 § 12	Consider studying brain injury care, specifically gathering client data from all brain injury service providers under contract with the Department of Human Services, including information on brain injury type, age of consent, age of referral, number of brain injuries, and whether the individual was included or excluded from the service.
1340 § 2	Consider studying all statutory provisions on indebtedness that may be incurred by political subdivisions, whether or not subject to debt limitations.
1367 § 5	Consider studying the return of property that comes into the custody of or is seized by peace officers across North Dakota.
1374 § 1	Consider studying of oil and gas put options, swap agreements, or other hedging strategies.
1395 § 1	Consider studying the benefit a statewide emergency information program would have on the current 911 and emergency services communication systems.
1399 § 2	Consider studying the types of spousal support ordered by the district courts and the desirability of providing statutory guidance for awards of spousal support.
1455 § 1	Consider studying issues related to contract nursing agencies in the state.
1469 § 1	Consider studying the provision of transportation services to veterans and the impact on those who provide or will provide free transportation services to veterans.
1476 § 8	Consider studying state-tribal tax agreements and allocation of revenues from centrally assessed property and property subject to payments in lieu of property taxes which is located on tribal trust lands.
2002 § 6	Consider studying the feasibility and desirability of the Secretary of State's office utilizing software which would allow employees of the office to monitor and report billable hours in order to improve efficiency and productivity within the Secretary of State's office.

Bill or Resolution No.	Subject Matter
2002 § 7	Consider studying the feasibility and desirability of consolidating all political subdivision and school district elections with the statewide primary election and the holding of all special elections on other specified dates during any year. If the Legislative Management conducts the study, the Legislative Management shall seek input and participation from the Secretary of State; representatives of cities, counties, school districts, and other political subdivisions; and representatives of political parties.
2003 § 14	Consider studying the feasibility and desirability of establishing a Medicaid fraud unit in the state. The study must include a review of the requirements for and the estimated costs and benefits of developing a Medicaid fraud unit as well as any statutory requirements and changes necessary for the realization of the full benefit of a Medicaid fraud unit. As part of the study, the Legislative Management shall seek input from the medical community, the Department of Human Services, and any other relevant professions.
2012 § 22	Consider studying the various telephone contact numbers supported by state appropriations to access information regarding services and programs available and determine if multiple numbers are necessary to respond appropriately to the residents of the state.
2012 § 24	Consider studying services for children with autism. The study must include a review of services currently provided by the Department of Human Services, the Superintendent of Public Instruction, and other state and local agencies, and an evaluation of the effectiveness of the continuum of care, transition between programs, and outcomes. The study must also identify current funding for these programs and projected funding needs in future bienniums by funding source.
2012 § 25	Consider studying the use of the structures and property of the Life Skills and Transition Center to determine the best and most efficient use of the properties. If conducted, the study must review the potential to transfer clients from the Life Skills and Transition Center to under-utilized facilities on the State Hospital campus or to a community-based setting. The study must also review potential alternative uses of structures on the Life Skills and Transition Center campus.
2013 § 23	Consider studying school district transportation and state reimbursement for transportation.
2013 § 24	Consider studying teacher preparation and retention, including reasons new teachers leave the profession, federal requirements for teacher preparation programs, and possible enhancements to teacher preparation programs and other programs designed to improve retention of new teachers. As part of the study the Superintendent of Public Instruction shall prepare exit interview forms to be completed by school districts when a teacher separates employment. The Superintendent of Public Instruction shall compile the information from the exit interviews and provide a report to the Legislative Management.
2013 § 25	Consider studying the effectiveness and efficiency of educational service providers, including regional education associations, the Education Standards and Practices Board, EduTech, the Center for Distance Education, the North Dakota STEM Network, and the teacher center network. The study shall examine organizational, structural, administrative, and supervisory options for strengthening the role and function of the named entities and ensuring the optimal provision of services to students, teachers, schools, and school districts throughout the state.
2017 § 4	Consider studying Game and Fish Department licenses provided to entities for the purpose of fundraising. The study must include a review of the present law in this and other states and the feasibility and desirability of allowing the Game and Fish Department to issue these licenses using procedures and within limits established by the Legislative Assembly.
2031 § 37	Consider studying teacher training programs in this state, including requirements for admission into a program, the requisite course of study, student teaching opportunities, and mentoring for new teachers. The study should also include an examination of collaborative efforts between schools of education and school districts in this state, and a comparative review of teacher training programs in other jurisdictions.
2035 § 4	Consider studying the impact of large economic development projects on political subdivisions. The study may include a review of the current process for seeking out input from political subdivisions potentially impacted by a large economic development project and any mechanisms in place to address the potential impact.
2037 § 4	Consider studying wind generation taxation, including analysis of property, generation, sales, and income tax application and equity within the industry.
2048 § 6	Consider studying mental health resources for youth and adults. The study must identify the populations that may benefit from a mental health resource network, the challenges and any deficiencies that may exist, and alternative resource delivery frameworks, and must provide details of how resource networks may be integrated into the existing mental health delivery system.
2119 § 1	Consider studying requirements for the submission of financial statements, to the Public Service Commission, by public warehouses and grain buyers in this state, including the time and manner in which the statements must be submitted and confidentiality protections for the information contained therein.
2174 § 1	Consider continuing its ongoing study of the needs and challenges of the North Dakota health care delivery system.

Bill or Resolution No.	Subject Matter
2233 § 2	Consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.
2245 § 1	Consider studying the feasibility and desirability of funding Indian veterans' service representatives to provide equivalent services to those provided by county veterans' service officers.
2356 § 1	Consider studying abandoned gravel pit reclamation practices. The study may address the feasibility and desirability of utilizing state funds for the reclamation of abandoned gravel pits and financially difficult reclamation projects on state and county lands, for the purpose of restoring land for farming, ranching, or other economic enterprises. The study may emphasize consideration of the potential economic benefit of restored land. The study may include consideration of current reclamation practices and standards for all North Dakota industries; use of the North Dakota outdoor heritage fund or other funds for financing; and input from departments, organizations, and associations with interest in reclamation practices.
2375 § 1	Consider studying the formation of community facilities districts for public improvements.
3002	Consider studying issues related to restitution for criminal acts.
3005	Consider studying, utilizing an independent consultant if necessary, the system of care for individuals with brain injury, including services available and the implementation of new services and programs, the effectiveness of those services, and any gaps in services.
3028	Consider studying the feasibility and desirability of the establishment of county or multi-county emergency response centers staffed around-the-clock by a core of emergency response professionals.
3036	Consider studying issues related to authorizing and issuing digital driver's licenses.
3037	Consider studying the current laws and rules relating to the sale of homemade food and homegrown produce and the policies and practices of local public health units and the State Department of Health regarding these sales and whether steps can be taken to make these policies more uniform throughout the state.
3039	Consider studying the software needs for all political subdivisions in the state to make specified tax, budgetary, and other public information available online and to determine the specific information that each city and county must provide.
3040	Consider studying the Airport Authorities Act, with particular attention to airport finances.
3045	Consider studying the automation of State Library data as used to track items owned, orders made, bills paid, patrons who have borrowed, and options for transferring materials between libraries.
3048	Consider studying potential opportunities for the creation and utilization of public-private partnerships at institutions of higher education within the North Dakota University System, for the purpose of creating software engineering and development programs.
3051	Consider studying all aspects of the development and implementation of the Common Core state standards, examine the strengths and weaknesses of the standards compared to those of other viable options, and clarify and define the role and function of this state in relation to the federal government with respect to the delivery of elementary and secondary education.
3055	Consider studying the feasibility and possible benefits of allowing members of the Legislative Assembly and other state employees to receive by electronic means all information regarding pay and benefits and other information shared by the employer and study the availability of recycling options in all state buildings.
3056	Consider studying projections on the number of low-income individuals in the state over the next 10 years, the desirability and feasibility of developing and expanding asset-building opportunities for those individuals, ways to encourage and improve financial literacy among the people of this state, and ways in which the private sector can assist people in improving their financial stability.
4001	Consider studying the financial reports required by law to be compiled and filed by political subdivisions to determine whether they are being used to full advantage and whether they should be improved, consolidated, or eliminated.
4005	Consider studying judicial issues related to behavioral health, including 24-hour hold, termination of parental rights, and court committals.
4006	Consider studying the impact of the marriage penalty within the supplemental security income program and the impact of the marriage penalty on retirement benefits under the Social Security Act.
4007	Consider studying the feasibility and desirability of implementing a Results First Initiative Program evaluation process in North Dakota.
4012	Consider studying the privacy, security, and data sharing laws in North Dakota, the effectiveness of federal privacy, security, and data sharing laws and the laws of other states, the interaction of federal and state laws, and whether current privacy, security, and data sharing protections meet the reasonable expectations of the citizens of North Dakota.
4014	Consider studying reinvestment scenarios and potential priorities for legacy fund earnings.

Bill or Resolution No.	Subject Matter
4019	Consider studying the feasibility and desirability of procuring health insurance, workers' compensation insurance, or other benefits for volunteer firefighters, volunteer emergency medical service personnel, and volunteer ambulance workers across the state, including determining whether the community volunteers would be covered in the case of an accident or injury, the scope and conditions of coverage, and the overall cost to insure community volunteers.
4021	Consider studying how the institution for mental disease Medicaid reimbursement exclusion impacts this state, including the impact on Medicaid enrollees and on private and public sector providers.

2017 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1025 - Game and Fish Department Special Allocation Hunting Licenses. This bill allows the Director of the Game and Fish Department to receive and consider applications for a limited number of special allocation hunting licenses in addition to a number of statutorily authorized special allocation licenses. (Agriculture and Natural Resources Committee)

House Bill No. 1026 - One-Call Excavation Notice System. This bill revises the definition of "locate period", increases membership of the One-Call Notification Center Board from eight to nine members, identifies the size of a locate area, addresses the assignment of costs of locating underground facilities, and clarifies liability provisions relating to damage of underground facilities. (Economic Impact Committee)

House Bill No. 1027 - Emergency Services Communications. This bill revises statutory provisions to address the transition to Next Generation 911, aligns standards for public safety communicators with federal requirements in related standards, and aligns billing practices with modern 911 database provisioning practices. (Economic Impact Committee)

House Bill No. 1028 - Wind Turbine Sales and Use Tax Exemption. This bill removes expiration dates to continue the sales and use tax exemptions for materials used in the construction of wind turbines. (Energy Development and Transmission Committee)

House Bill No. 1029 - Federal Funds Analysis. This bill requires state agencies to perform an analysis before applying for or accepting federal funds and continues the study of statutory and regulatory requirements placed on North Dakota state government agencies by United States government agencies. (Government Finance Committee)

House Bill No. 1030 - Higher Education Campus Improvements. This bill increases the minimum cost of higher education campus improvements that require the consent of the Legislative Assembly or the Budget Section from $385,000 to $700,000 and removes the authority of the Budget Section to approve the construction of any new building or any addition to a building under the control of the State Board of Higher Education. (Government Finance Committee)

House Bill No. 1031 - Purchase or Lease of Aircraft. This bill removes the authority of the Budget Section to authorize the purchase or lease of an aircraft by a state agency or other entity of state government. (Government Finance Committee)

House Bill No. 1032 - Medicaid Expansion Reimbursement Rates. This bill removes the July 31, 2017, sunset for the Medicaid Expansion program, provides Medicaid Expansion provider reimbursement rates are the same as the provider reimbursement rates set for traditional Medicaid, and removes the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange. (Health Care Reform Review Committee)

House Bill No. 1033 - Medicaid Expansion Cost-Sharing and Medicaid Care Coordination Agreements. This bill removes the July 31, 2017, sunset for the Medicaid Expansion program, removes the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange, directs the Department of Human Services to pursue a federal Medicaid waiver to allow the department to implement premium cost-sharing for individuals enrolled in Medicaid Expansion if the cost-sharing program does not have a negative fiscal effect for the state, and directs the department to pursue care coordination agreements to increase federal reimbursement for Medicaid-eligible American Indians. (Health Care Reform Review Committee)

House Bill No. 1034 - Medicaid Expansion Reimbursement Rates Transparency. This bill removes the July 31, 2017, sunset for the Medicaid Expansion program, removes the requirement Medicaid Expansion be provided through a private carrier or by utilizing the health insurance exchange, provides if the Department of Human Services contracts with a private carrier, the contract must provide the department with full access to provider reimbursement rates and the department is directed to consider these rates in selecting a private carrier; and directs the department to report to the Legislative Management regarding provider reimbursement rates under the Medicaid Expansion program. (Health Care Reform Review Committee)

House Bill No. 1035 - Dental Loan Repayment Program. This bill changes the dental loan repayment program to provide for a prorated payback of loan repayment funds if a dentist breaches the loan repayment contract. (Health Services Committee)

House Bill No. 1036 - Student Financial Assistance Grant Advisory Board. This bill repeals the Student Financial Assistance Grant Advisory Board which provides recommendations to the State Board of Higher Education regarding needs-based student financial assistance grants. (Higher Education Committee)

House Bill No. 1037 - Use of E-Transcripts System. This bill requires elementary and secondary school districts to use the E-Transcripts system for recording student information. (Higher Education Committee)

House Bill No. 1038 - Family Caregiver Supports and Services. This bill provides appropriations to the North Dakota State University Extension Service for expanding local training programs to include family caregiver training and to the Department of Human Services for administering a Lifespan Respite Care Program and applying an inflationary adjustment to the service payments for the elderly and disabled sliding fee schedule. The bill also requires the Department of Human Services to establish a caregiver resource center website and review options and provide recommendations to the Legislative Management to expand home- and community-based services. (Human Services Committee)

House Bill No. 1039 - Hospital Discharge Policies. This bill requires hospitals to establish and maintain written discharge policies. (Human Services Committee)

House Bill No. 1040 - Behavioral Health Services Program Expansion. This bill provides appropriations to the Department of Human Services for adopting rules for an evidence-based alcohol and drug education program for certain individuals under 21 years of age, expanding children's prevention and early intervention behavioral health services, establishing a behavioral health provider database, expanding peer-to-peer and family-to-family support services, and providing targeted case management services for individuals with severe mental illness and severe emotional disturbance. (Human Services Committee)

House Bill No. 1041 - Justice Reinvestment. This bill shifts the authority to allow sentence reduction credit from the judiciary to a correctional facility; authorizes the use of sentence reduction credit for time spent in custody; allows the parole board to consider medical parole for offenders who are not otherwise eligible for parole; requires the use of presumptive probation for individuals convicted of Class A misdemeanor drug offenses; reclassifies ingestion, possession, and paraphernalia offenses to a lower-level criminal offense; reduces the proximity to a school before an increased penalty for a drug offense is warranted; authorizes additional mental health professionals to provide addiction counseling services; removes the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and creates a pilot project for pretrial services. (Incarceration Issues Committee)

House Bill No. 1042 - Justice Reinvestment. This bill shifts the authority to allow sentence reduction credit from the judiciary to a correctional facility; authorizes the use of sentence reduction credit for time spent in custody; allows the parole board to consider medical parole for offenders who are not otherwise eligible for parole; reclassifies ingestion, possession, and paraphernalia offenses to a lower-level criminal offense; reduces the proximity to a school before an increased penalty for a drug offense is warranted; authorizes additional mental health professionals to provide addiction counseling services; removes the prohibition against individuals who have a felony substance abuse conviction from being eligible for various supplemental nutrition assistance programs; and creates a pilot project for pretrial services. (Commission on Alternatives to Incarceration)

House Bill No. 1043 - Constitutional and Statutory Revision. This bill makes technical corrections throughout the North Dakota Century Code. (Judiciary Committee)

House Bill No. 1044 - Primary Sector Business. This bill replaces existing definitions of "primary sector business" with a uniform definition of "primary sector business." (Political Subdivision Taxation Committee)

House Bill No. 1045 - Angel Fund Investment Tax Credit. This bill sunsets the availability of the angel fund investment tax credit for investments made after December 31, 2017, and increases allowable credit amounts and carryforward periods related to the seed capital investment tax credit. (Political Subdivision Taxation Committee)

House Bill No. 1046 - Telecommunications Sales Tax Exemption. This bill removes the sunset date attached to the telecommunications infrastructure sales tax exemption. (Political Subdivision Taxation Committee)

House Bill No. 1047 - Automation Equipment Credit. This bill removes the sunset date attached to the manufacturing automation equipment income tax credit. (Political Subdivision Taxation Committee)

House Bill No. 1048 - Nonprofit Development Corporation Credit. This bill repeals the certified nonprofit development corporation income tax credit. (Political Subdivision Taxation Committee)

House Bill No. 1049 - Wage and Salary Credit. This bill repeals the wage and salary income tax credit. (Political Subdivision Taxation Committee)

House Bill No. 1050 - Microbusiness Credit. This bill repeals the microbusiness income tax credit. (Political Subdivision Taxation Committee)

SENATE

Senate Bill No. 2026 - Agriculture Commissioner General Authority Rewrite and Redesignation. This bill rewrites the laws pertaining to the general administration authority of the Agriculture Commissioner and other agricultural entities, moves the rewritten chapters into North Dakota Century Code Title 4.1, and redesignates various chapters throughout Title 4.1. (Agriculture and Natural Resources Committee)

Senate Bill No. 2027 - Fertilizer and Pesticide Rewrite. This bill rewrites the laws pertaining to fertilizer and pesticide and moves the rewritten chapters into Title 4.1. (Agriculture and Natural Resources Committee)

Senate Bill No. 2028 - **Livestock and Other Animals Rewrite.** This bill rewrites the laws pertaining to livestock and other animals and moves the rewritten chapters into Title 4.1. (Agriculture and Natural Resources Committee)

Senate Bill No. 2029 - Plants and Trees Rewrite. This bill rewrites the laws pertaining to plants and trees and moves the rewritten chapters into Title 4.1. (Agriculture and Natural Resources Committee)

Senate Concurrent Resolution No. 4001 - Federal Block Grant Hearings. This resolution authorizes the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 65th Legislative Assembly through September 30, 2019. (Budget Section)

Senate Bill No. 2030 - North Dakota United. This bill makes technical corrections in North Dakota Century Code to change references from the North Dakota Education Association to North Dakota United. The bill also removes the requirement that the Governor choose from a list of three nominees submitted by the North Dakota Education Association for two positions on the Board of Trustees for the Teachers' Fund for Retirement. (Education Committee)

Senate Bill No. 2031 Allocation of Coal Conversion Tax Revenue. This bill removes the expiration date and continues the 5 percent allocation of the general fund share of coal conversion tax revenue collections to the lignite research fund. (Energy Development and Transmission Committee)

Senate Bill No. 2032 - Budget Section Reports. This bill removes or amends certain Budget Section reporting requirements. (Government Finance Committee)

Senate Bill No. 2033 - Clinical Supervision of Behavioral Health Professionals. This bill provides for clinical supervision of behavioral health professionals by behavioral health professionals outside of their respective professions and to provide for a report to the Legislative Management. (Health Services Committee)

Senate Bill No. 2034 - Nursing Faculty Loan Forgiveness Program. This bill establishes a loan forgiveness program for nursing faculty. (Health Services Committee)

Senate Bill No. 2035 - Higher Education Funding Formula. This bill removes the expiration date from North Dakota Century Code Section 15-18.2-06 which establishes a minimum amount payable to an institution through the higher education funding formula. (Higher Education Committee)

Senate Bill No. 2036 - Higher Education Challenge Grant Program. This bill continues the higher education challenge grant program into the 2017-19 biennium and provides a $23.5 million appropriation from the student loan trust fund for grants. (Higher Education Committee)

Senate Bill No. 2037 - Teacher Shortage Loan Forgiveness Program Award Amount. This bill increases the teacher shortage loan forgiveness program award amount from $1,000 to $1,500 per year. (Higher Education Committee)

Senate Bill No. 2038 - Behavioral Health Services Policy Changes. This bill extends the holding period from 24 hours to 72 hours for emergency involuntary commitments for individuals with a serious physical condition or illness, changes youth mental health training requirements, requires behavioral health training for early childhood service providers, and creates a children's behavioral health task force. (Human Services Committee)

Senate Bill No. 2039 - Role and Function of Department of Human Services - Behavioral Health Services. This bill changes the role and function of the Department of Human Services behavioral health services, including behavioral health definitions; administration of behavioral health programs; licensure process for regional human service centers; services available to individuals with serious and persistent mental illness; membership and role of advisory groups for human services centers; designation of behavioral health providers to furnish preventive diagnostic, therapeutic,

rehabilitative, or palliative services to individuals eligible for medical assistance; and designation of the location of a second state hospital. (Human Services Committee)

Senate Bill No. 2040 - Addiction Counseling. This bill includes assessment or counseling for gambling, tobacco, nicotine, or other harmful substance or behavior in the definition of addiction counseling. (Human Services Committee)

Senate Concurrent Resolution No. 4002 - State Hospital Location. This resolution removes the constitutional requirement that a state hospital be located in Jamestown. (Human Services Committee)

Senate Bill No. 2041 - Eligibility Assistance for Developmental Disability. This bill allows individuals with Down syndrome to be eligible for developmental disabilities services. (Human Services Committee)

Senate Bill No. 2042 - Mental Health Professionals. This bill establishes a tiered system for the roles of mental health professionals. (Human Services Committee)

Senate Bill No. 2043 - Definition of Marriage. This bill provides for changes to several references to married couples in the North Dakota Century Code to comply with the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. (2015). The bill draft consists of 33 sections that amend language from either "husband or wife" to "two individuals married to each other" or "husband" or "wife" to "spouse." (Judiciary Committee)

Senate Bill No. 2044 - Dynamic Fiscal Impact Statements. This bill allows the Chairman of Legislative Management to acquire the software necessary for an interim committee to prepare dynamic fiscal impact statements for economic development tax incentives selected for review during the 2017-18 interim. The bill provides an appropriation of up to $165,000 to acquire the necessary software. (Political Subdivision Taxation Committee)

Senate Bill No. 2045 - Deposit of Overweight Violation Fees. This bill removes the expiration date allowing the deposit of the civil portion of the penalty for overweight violation fees to continue to be deposited with the jurisdiction of the road in which the violation occurred rather than the state highway fund. (Transportation Committee)

Senate Bill No. 2046 - Tribal Youth Services Pilot Program. This bill establishes a pilot program for providing state services to juveniles adjudicated in tribal court. The bill directs the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws. (Tribal and State Relations Committee)

Senate Bill No. 2047 - Quick Take Eminent Domain. This bill requires a negotiation process and affidavit of compliance when a water resource district uses quick take eminent domain. The bill allows a landowner up to 75 days to negotiate with a water resource district before the district may take possession of property and ensures a landowner receives multiple communications from the water resource district during the 75-day negotiation period. The bill requires the water resource board chairman to file an affidavit confirming the district's compliance with the negotiation process and allows the water resource district to rely upon a landowner's actual or constructive notice of the required communications. (Water Topics Overview Committee)

Senate Bill No. 2048 - Workers' Compensation Attorney's Fees. This bill directs Workforce Safety and Insurance to pay an injured employee's attorney's fees on appeal when the employee prevails, regardless of whether Workforce Safety and Insurance ultimately prevails on further appeal. The bill limits Workforce Safety and Insurance's payment of attorney's fees to the level of appeal at which the injured employee prevailed. (Workers Compensation Review Committee)