GOVERNMENT ADMINISTRATION COMMITTEE

The Government Administration Committee was assigned a study of space needs of the executive, judicial, and legislative branches, and the Ethics Commission.

Committee members were Senators Randy A. Burckhard (Chairman), Jerry Klein, Scott Meyer, and Erin Oban, and Representatives Rick Becker, Glenn Bosch, Jared C. Hagert, Karla Rose Hanson, Pat D. Heinert, Karen Karls, Jim Kasper, Lawrence R. Klemin, Ben Koppelman, Todd Porter, Shannon Roers Jones, and Dan Ruby.

STUDY OF SPACE NEEDS

The Government Administration Committee studied space needs of the executive, judicial, and legislative branches, and the Ethics Commission. The study included:

- A review of each branch's and the Ethics Commission's employee work location policies;
- An assessment of the space needs of each branch and the Ethics Commission to fulfill their constitutional and statutory responsibilities;
- An evaluation of state agency leases of space from private and other governmental entities in Bismarck, amounts being paid for these leases, and state agency rental payments being made to the Office of Management and Budget from special and federal funds;
- Consideration of the feasibility and desirability of the Office of Management and Budget charging rent to agencies receiving funding from the general fund; and
- The development of a space utilization plan for the Capitol complex.

The study included consideration of whether adequately sized committee rooms, appropriate accommodations under the federal Americans with Disabilities Act of 1990, and flexible meeting areas are available.

Legislative Branch Space

The committee received testimony from the Legislative Council indicating:

- The most significant changes in legislative committee rooms over the last 3 decades occurred during the 2021 legislative session due to the need for social distancing resulting from the COVID-19 emergency.
- The 2021 changes expanded the legislative presence in the judicial wing of the State Capitol through the construction of four new committee rooms.
- Most feedback from legislators and others regarding the newly constructed meeting rooms was positive and many legislators expressed interest in continuing to use the rooms.
- The legislative branch has retained control over the four new rooms since the conclusion of the 2021 legislative session; however, the long-term jurisdiction over the rooms has not been formally resolved.
- North Dakota Century Code Section 48-08-04 identifies areas of the State Capitol which may not be used without the authorization of the Legislative Council.

Recommendations

The committee recommends Senate Bill No. 2349 to transfer certain space in the judicial wing of the State Capitol, including judicial wing room 216 and judicial wing rooms 327 B, C, and E, from the State Department of Health and the Department of Human Services to the legislative branch.

GOVERNMENT FINANCE COMMITTEE - SENATE BILL NO. 2290 STUDY

The Chairman of the Legislative Management directed the Government Finance Committee to study the provisions of Senate Bill No. 2290 (2021). The study must include a determination of the appropriateness of the bill's requirement for the Legislative Assembly to approve any Emergency Commission requests to expend funds after the aggregate amount of federal fund requests approved by the commission in a biennium has exceeded $50 million and after the aggregate amount of other funds requests approved by the commission in a biennium has exceeded $5 million. The committee is required to report its findings and recommendations to the Legislative Management by October 2021.

As approved by the Legislative Assembly, Senate Bill No. 2290 required the Budget Section to approve requests to receive and spend state special funds and federal funds during the interim if the request exceeds $50,000. If the request exceeds $50,000 but is less than $3 million, the spending request may not be amended by the Budget Section. Requests exceeding $3 million may be amended by the Budget Section, and any amended requests approved by the Budget Section are deemed to be approved by the Emergency Commission. The Budget Section may not approve more than $50 million of federal funds spending requests or more than $5 million of state special funds spending requests in aggregate during a biennium. The Legislative Assembly must approve any spending request for federal funds exceeding $50 million, but Federal Highway Administration emergency relief funding and emergency recovery funding are exempt from the approval limits. The bill included an emergency clause and became effective April 29, 2021.

Committee members were Representatives Michael Howe (Chairman), Pamela Anderson, Jeff Delzer, Jared C. Hagert, Gary Kreidt, Lisa Meier, Corey Mock, Dave Nehring, Gary Paur, Mike Schatz, Jim Schmidt, Steve Vetter, Don Vigesaa and Senators Brad Bekkedahl, Richard Marcellais, Ronald Sorvaag.

EMERGENCY COMMISSION - BRIEF HISTORY

The Emergency Commission was created in 1915 when the Legislative Assembly appropriated $25,000 to establish a state contingencies funding pool to address state emergencies. As defined in North Dakota Century Code Section 54-16-00.1, an emergency means a calamity or an unforeseen happening subsequent to the time the appropriation was made and which was clearly not within the contemplation of the Legislative Assembly and the Governor. Initially, the Emergency Commission consisted of the Governor, the Secretary of State, and the State Auditor. Currently, the Emergency Commission consists of the Governor, the Secretary of State, the chairmen of the Appropriations Committees, and the majority leaders of the House and Senate. Until 1975, the Emergency Commission could approve any requests from the state contingencies funding pool up to the total amount appropriated by the Legislative Assembly; however, starting in 1975, Budget Section approval was required when the aggregate approvals from the state contingencies funding pool exceeded $500,000. In Senate Bill No. 2015 (1999), the Legislative Assembly amended Section 54-16-04.1 and 54-16-04.2 requiring Budget Section approval to receive and spend state special funds or federal funds only if the request exceeded $50,000.

During the 1989-90 interim, the Legislative Audit and Fiscal Review Committee noted various state agency audit reports included a recommendation for state agencies to comply with Section 12 of Article X of the Constitution of North Dakota, which requires public money to be spent only pursuant to an appropriation made by the Legislative Assembly. As a result, the 1991 Legislative Assembly approved Senate Bill No. 2168 to provide an appropriation of $10 million of special funds authority to create a special funds state contingencies funding pool, which the Emergency Commission could disburse to state agencies as needed. However, the Legislative Assembly amended Section 54-16-04.2 in Section 11 of Senate Bill No. 2015 (1995) to remove the provision that limited the approvals of the Emergency Commission for state special funds to the amount appropriated by the Legislative Assembly. Therefore, the appropriation of special funds authority for a special funds state contingencies funding pool was removed from the budget in the 1995-97 biennium, and the state contingencies funding pool consisted of $500,000 from the general fund only.

RECENT BUDGET SECTION SPENDING APPROVALS

Since the 2007-08 interim, the Budget Section approved the following requests, which also were approved by the Emergency Commission, for the acceptance and expenditure of additional state special funds and federal funds:

	Total Requests	State Special Funds	Federal Funds
2007-08 interim	33	$20,988,584	$70,454,427
2009-10 interim	39	$2,130,000[1]	$63,413,419[1]
2011-12 interim	28	$546,000[2]	$25,904,860[2]
2013-14 interim	24	$1,987,856[3]	$7,169,024[3]
2015-16 interim	17	$1,460,000[4]	$1,558,365[4]
2017-18 interim	11	$231,550[5]	$31,124,500[5]
2019-20 interim	62	$40,595,000[6]	$1,883,802,474[6]

[1]These amounts include $50,701,861 of federal American Recovery and Reinvestment Act (ARRA) funding, but exclude $131,418,750 related to federal disaster relief funding and $81,750,000 of emergency transportation funding ($6,750,000 of matching funds from the state highway fund and $75,500,000 of Federal Highway Administration emergency relief funds).

[2]These amounts include $7,000,000 of federal ARRA funding, but exclude $386,710,411 related to disaster relief funding ($33,610,411 from the state disaster relief fund and $353,100,000 of federal funds) and $387,100,000 of emergency transportation funding ($32,400,000 of matching funds from the state highway fund and $354,700,000 of Federal Highway Administration emergency relief funds).

[3]These amounts exclude $27,332,970 from the state disaster relief fund and $11,134,875 from federal funds related to disaster relief funding.

[4]These amounts exclude $32,307,427 from the state disaster relief fund related to disaster relief funding.

[5]These amounts exclude $4,512,468 from the state disaster relief fund related to disaster relief funding.

[6]These amounts include $1,772,634,147 of federal coronavirus relief funding, but exclude $494,915 from the state disaster relief fund related to disaster relief funding.

COMMITTEE CONSIDERATIONS

Bill Drafts

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on an adjustment to the current limits. The bill draft would have increased the approval limit for federal funds by $25 million, from $50 million to $75 million per biennium. The bill draft also would have increased the approval limit for state special funds by $70 million, from $5 million to $75 million per biennium.

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The bill draft replaces the approval limit of $50 million for federal funds with an amount based on 2 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The approval limit of $5 million for state special funds is replaced with an amount based on 1 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The bill draft also includes other minor updates for clarity and consistency. Based on the 2021-23 biennium general fund budget of $4,992,957,330, the approval limits under the provisions of this bill draft would be $99,859,147 for federal funds and $49,929,573 for special funds.

Recommendations

The committee recommends a bill draft [21.1085.01000] for consideration during a 2021 special or reconvened legislative session or during the 2023 regular legislative session relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The committee also recommends the Legislative Management consider temporarily increasing the state special fund approval limit by $15 million, from $5 million to $20 million, for the remainder of the 2021-23 biennium during a 2021 special or reconvened legislative session.

HUMAN SERVICES COMMITTEE

Pursuant to a Legislative Management Chairman directive, the Human Services Committee was assigned the duty to review the behavioral health bed management system authorized by the 2021 Legislative Assembly to determine if any statutory changes for the program are needed.

Committee members are Senators Judy Lee (Chairman), Howard C. Anderson, Jr., JoNell A. Bakke, Jason G. Heitkamp, Kathy Hogan, and David Hogue and Representatives Gretchen Dobervich, Clayton Fegley, Dwight Kiefert, Alisa Mitskog, Karen M. Rohr, Matthew Ruby, Mark Sanford, Mary Schneider, Randy A. Schobinger, Kathy Skroch, Michelle Strinden, and Greg Westlind.

BEHAVIORAL HEALTH BED MANAGEMENT SYSTEM

Background

North Dakota Century Code Section 50-06-41.3, as created in House Bill No. 1012 (2021), requires the Department of Human Services (DHS) to establish and maintain a behavioral health bed management system to improve utilization of behavioral health bed capacity. The section requires public and private providers of residential or inpatient behavioral health services to participate in and report daily to DHS the information and documentation necessary to maintain the system. The database can then be used by providers to identify available behavioral health beds in the state.

Testimony and Committee Discussion

The committee received testimony indicating many behavioral health programs managed by the Department of Corrections and Rehabilitation (DOCR) are licensed by DHS and would be included in the behavioral health bed management system. However, because behavioral health beds managed by DOCR are not available to the public, it may not be appropriate to include those beds in the database.

Committee Recommendation

The committee recommends Senate Bill No. 2348 to amend Section 50-06-41.3 to exclude DOCR from participating in the behavioral health bed management system.

INTERIM HOUSE APPROPRIATIONS COMMITTEE

The Chairman of the Legislative Management appointed an Interim House Appropriations Committee and assigned the committee the following duties:

- Review proposals to use funding from the federal State Fiscal Recovery Fund established through the federal American Rescue Plan Act of 2021 and develop recommendations for the use of funds.
- Review legislative appropriations from the federal Coronavirus Capital Projects Fund and recommend any necessary changes to existing appropriations from the fund and develop recommendations regarding the use of any remaining available funding.
- Consider any other budget adjustments requiring legislation that are necessary before the 2023 regular legislative session.

Committee members were Representatives Jeff Delzer (Chairman), Bert Anderson, Larry Bellew, Tracy Boe, Mike Brandenburg, Michael Howe, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Alisa Mitskog, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Mark Sanford, Mike Schatz, Jim Schmidt, Randy A. Schobinger, Michelle Strinden, and Don Vigesaa.

STATE FISCAL RECOVERY FUND

Background

The American Rescue Plan Act of 2021 included $219.8 billion for the State Fiscal Recovery Fund. Of this amount, $195.3 billion is available to the states, $25.5 billion will be distributed equally to the states and the District of Columbia, resulting in $500 million allocated to each state. After an additional $755 million is distributed to the District of Columbia, the remaining $169 billion will be distributed to the states based on each state's share of seasonally adjusted unemployed persons for the 3-month period ending December 2020. North Dakota's allocation from the State Fiscal Recovery Fund is $1,007,502,515. The funds have been received and are on deposit in the Bank of North Dakota.

Allowable Uses

Allowable uses of funding from the State Fiscal Recovery Fund, which must be obligated by December 31, 2024, and spent by December 31, 2026, are as follows:

- Costs related to the Coronavirus (COVID-19) pandemic, including assistance to households, small businesses, nonprofits, and affected industries, such as tourism, travel, and hospitality;
- Provide premium pay of up to $13 per hour in addition to base pay, up to a maximum of $25,000, to state, territory, or tribal government workers who perform essential work during the COVID-19 pandemic, or provide grants to employers with employees who perform essential work, which is defined as work needed to maintain continuity of operations of critical infrastructure and other sectors designated by the Governor as critical to protect the health and well-being of residents;
- The cost of providing government services to the extent there was lost revenue as a result of the COVID-19 pandemic; and
- Investment costs in water, sewer, and broadband infrastructure.

States may not use the funding to reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which funds received have been spent or returned. States cannot use funds to make payments to pension plans. The Office of Management and Budget submitted $1.8 billion of revenue loss as of December 2020; therefore, the funds should be able to be used for the cost of government services.

FEDERAL CORONAVIRUS CAPITAL PROJECTS FUND

Background

The American Rescue Plan Act of 2021 appropriated $10 billion to the United States Department of the Treasury for a Coronavirus Capital Projects Fund to provide payments to states, territories, freely associated states, and tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19)."

North Dakota received an initial allocation of $112,473,563 from the Coronavirus Capital Projects Fund. North Dakota's allocation was later increased to $113,276,228. The Legislative Assembly, based on initial information provided regarding the fund, approved using $106,474,000 of the funding for the following projects for the 2021-23 biennium:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Department of Career and Technical Education	Statewide area career center initiative grant program	70,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total - 2021-23 appropriations		$106,474,000

Eligible Uses Based on September 2021 Guidance

The September 2021 guidance provides grant funds may be used for critical capital projects that directly enable work, education, and health monitoring in response to COVID-19. To be eligible for funding, a project must meet all of the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring;
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. The capital project is designed to address a critical need of the community to be served by it.

PROPOSALS RECEIVED

The committee reviewed proposals from members of the Legislative Assembly and the Governor for the use of federal American Rescue Plan Act funds and for other budget adjustments as detailed in this section.

Federal Coronavirus Capital Projects Fund

The committee reviewed a proposal to adjust the funding source of certain projects that received an appropriation from the federal Coronavirus Capital Projects Fund during the 2021 regular legislative session. The proposal would change the funding source of nine projects from the fund to federal state fiscal recovery funds.

Agency	Description	Amount
Office of Management and Budget	Medical center construction grant	$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total		$36,474,000

Federal State Fiscal Recovery Funds

The committee reviewed 156 proposals to use federal state fiscal recovery funds as follows:

Category	Proposals Received
Infrastructure	The committee reviewed 15 proposals to use federal state fiscal recovery funds for infrastructure projects, including natural gas pipelines, roads, water control, and other projects.
Aid to political subdivisions	The committee reviewed 33 proposals to use federal state fiscal recovery funds to provide aid to political subdivisions for road and bridge projects, local park district infrastructure projects, water and sewer projects, and other purposes.
Capital improvements	The committee reviewed 34 proposals to use federal state fiscal recovery funds for capital projects for state agency and institution building projects, deferred maintenance, and other purposes.
Information technology	The committee reviewed 19 proposals to use federal state fiscal recovery funds for information technology projects, including cybersecurity enhancements, state agency software projects, and other purposes.

Category	Proposals Received
Economic development	The committee reviewed 29 proposals to use federal state fiscal recovery funds for economic development, including research programs, workforce initiatives, business incentives, and other purposes.
Other proposals	The committee reviewed 26 proposals to use federal state fiscal recovery funds for other purposes, including human service programs, long-term care facility assistance, child care programs, and other purposes.

Other Budget Adjustments

The committee reviewed 27 proposals for other budget adjustments. The proposals included adjustments to federal spending authority for agencies, the authorization of new full-time equivalent (FTE) positions, additional authority to allow for the distribution of federal local fiscal recovery funds, and other purposes.

COMMITTEE RECOMMENDATIONS

Bill Draft 21.1104.06000

The committee recommends House Bill No. 1505 to appropriate $509,150,228 of federal COVID-19 relief funding, of which $113,276,228 is from the federal Coronavirus Capital Projects Fund, $383,474,000 is from the federal State Fiscal Recovery Fund, and $12,400,000 is from the federal Coronavirus Relief Fund to various state agencies, as follows:

Federal Coronavirus Capital Projects Fund		
Agency	**Description**	**Federal Funds**
Department of Career and Technical Education[1]	Section 1 - Statewide area career center initiative grant program for career academies	$50,000,000
Information Technology Department	Section 8 - Broadband infrastructure grants to providers to expand coverage and ensure reliable high-speed broadband Internet to all addresses in the state	63,276,228
Total		$113,276,228

[1]House Bill No. 1015 (2021) provided $70 million from the federal Coronavirus Relief Fund to the Department of Career and Technical Education for career academies. Section 1 of the bill draft would provide a total of $80 million for this purpose, of which $50 million is from the federal Coronavirus Capital Projects Fund and $30 million is from the federal State Fiscal Recovery Fund.

Federal State Fiscal Recovery Fund		
Agency	**Description**	**Federal Funds**
Department of Career and Technical Education[1]	Section 1 - Statewide area career center initiative grant program	$30,000,000
Department of Public Instruction	Section 1 - Grant to a children's science center project to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	5,900,000
University of North Dakota	Section 1 - Funding to reconstruct the University of North Dakota apron at Grand Forks International Airport to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	5,000,000
Dickinson State University	Section 1 - Funding for Dickinson State University projects, including a Pulver Hall project, a meat processing laboratory remodel, and other projects to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	4,000,000
Highway Patrol	Section 1 - Funding for a Law Enforcement Training Academy Center to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	3,000,000
Office of Management and Budget	Section 1 - Medical center grant to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	500,000
Judicial branch	Section 1 - Information technology equipment to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	157,600
State Historical Society	Section 2 - Historic site deferred maintenance to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1018 (2021)	4,200,000
Parks and Recreation Department	Section 3 - State park deferred maintenance and essential infrastructure to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	7,900,000
Parks and Recreation Department	Section 4 - State park capital improvements to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	816,400

Federal State Fiscal Recovery Fund		
Agency	**Description**	**Federal Funds**
Parks and Recreation Department	Section 5 - Funding for the International Peace Garden to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	3,000,000
Agriculture Commissioner	Section 6 - Intermodal facility construction grant program to replace funding from the federal Coronavirus Capital Projects Fund in Senate Bill No. 2245 (2021)	2,000,000
Department of Transportation	Section 7 - State road and bridge projects ($200 million), to improve county bridges ($50 million), for allocations to counties based on the highway tax distribution formula ($50 million), and for allocations to townships ($17 million), which was appropriated in House Bill No. 1395 (2021)	317,000,000
Total		$383,474,000

[1]House Bill No. 1015 (2021) provided $70 million from the federal Coronavirus Relief Fund to the Department of Career and Technical Education for career academies. Section 1 of the bill draft would provide a total of $80 million for this purpose, of which $50 million is from the federal Coronavirus Capital Projects Fund and $30 million is from the federal State Fiscal Recovery Fund.

Federal Coronavirus Relief Fund		
Agency	**Description**	**Federal Funds**
Department of Human Services	Section 9 - Payroll expenses	$4,400,000
Department of Corrections and Rehabilitation	Section 9 - Payroll expenses	7,000,000
Adjutant General	Section 9 - Payroll expenses	1,000,000
Total		$12,400,000

Bill Draft 21.1130.03000

The committee recommends House Bill No. 1506 to appropriate funding to the State Treasurer, Attorney General, Department of Human Services, Retirement and Investment Office, and Department of Public Instruction; transfer Bank of North Dakota profits to the University of North Dakota; authorize 16 FTE Department of Human Services positions; provide Department of Human Services transfer authority; and authorize 6 FTE Retirement and Investment Office positions, as follows:

Federal State Fiscal Recovery Fund		
Agency	**Description**	**Federal Funds**
Department of Public Instruction	Section 16 - Information technology project upgrades in lieu of withholding state school aid from school districts not eligible for federal Elementary and Secondary School Emergency Relief (ESSER) funding allocations	$100,000
Total		$100,000

Other Fiscal Items			
Agency	**Description**	**Special Funds**	**Federal Funds**
State Treasurer	Section 1 - Provides additional appropriation authority to the State Treasurer to distribute funding from the federal Local Fiscal Recovery Fund to cities, to provide a total of $53,174,975 appropriated to the State Treasurer for this purpose	$0	$3,014,975
University of North Dakota	Section 2 - Transfers Bank of North Dakota profits to the University of North Dakota for campus network upgrades	750,000	0
Attorney General	Section 3 - Funding from the Attorney General refund fund for State Crime Laboratory salary equity increases	537,297	0
Department of Human Services	Section 4 - Authorizes 16 FTE positions for the Department of Human Services	0	0
Department of Human Services	Section 5 - Appropriates federal funding due to the increased federal medical assistance percentage (FMAP) and provides the department an exemption to use up to $16 million of any general fund savings to address any decreases in the regular FMAP rate	0	79,600,000
Department of Human Services	Section 6 - Medicaid postpartum coverage	0	600,000

Other Fiscal Items			
Agency	**Description**	**Special Funds**	**Federal Funds**
Department of Human Services	Section 7 - Lifespan respite care program	0	386,690
Department of Human Services	Section 8 - Vulnerable adult protection services program	0	1,936,350
Department of Human Services	Section 9 - Supplemental nutrition assistance program verification database	0	239,558
Department of Human Services	Section 10 - Children and Family Services transition program	0	1,168,347
Department of Human Services	Section 11 - Provides line item transfer authority to the Department of Human Services for House Bill Nos. 1394 and 1395 (2021)	0	0
Department of Human Services	Section 12 - Funding for the State Hospital	0	200,000
Department of Human Services	Section 13 - Money follows the person capacity program	0	5,000,000
Department of Human Services	Section 14 - Randolph Sheppard vocational rehabilitation program	0	22,663
Retirement and Investment Office	Section 15 - Authorizes 6 new FTE positions and appropriates funding for salaries and operating expenses	1,806,862	0
Department of Public Instruction	Section 16 - Funding from state school aid withholding for information technology upgrades	10,000,000	0
Total		$13,094,159	$92,168,583

Bill Draft 21.1137.01000

The committee recommends a bill draft [21.1137.01000] to appropriate $570,035,705 from the federal State Fiscal Recovery Fund, included in Section 1 of the bill, as follows:

Federal State Fiscal Recovery Fund		
Agency	**Description**	**Federal Funds**
Industrial Commission	Pipeline infrastructure to transport natural gas from western to eastern North Dakota	$150,000,000
Industrial Commission	Abandoned oil well conversion to water supply grant program to convert abandoned wells to livestock freshwater supply wells for permanent drought resiliency	3,200,000
Department of Water Resources	Water projects with $50 million used to replace funding from the resources trust fund for current projects	75,000,000
Department of Corrections and Rehabilitation	Stipends to county jails for costs to house inmates sentenced to the department but deferred admission due to the pandemic	4,800,000
Parks and Recreation Department	Grants to local park districts to renovate and upgrade existing outdoor facilities with a maximum of $1.5 million per park district and a 1-to-1 matching requirement	5,000,000
North Dakota State University Main Research Center	Capital projects, including $446,000 for projects at the Carrington Research Extension Center (REC), $1,963,000 at the Central Grasslands REC, $3,420,000 at the Hettinger REC, and $2,200,000 at the Dickinson REC	8,029,000
State Department of Health	Public health laboratory project	15,000,000
Department of Corrections and Rehabilitation	Free through recovery program for capacity increase, wait time reduction, recidivism reduction, and to improve outcomes	2,995,200
Parks and Recreation Department	State park deferred maintenance or small capital projects with each of the 13 state parks receiving a minimum of $100,000	10,000,000
Office of Management and Budget	Critical maintenance projects	10,000,000
Office of Management and Budget	Human resources transformation initiative	
Office of Management and Budget	Heating, ventilation, and air conditioning improvements to the legislative chambers and Brynhild Haugland Room	7,000,000
State Historical Society	Essential infrastructure at historic sites	950,000
State Board of Higher Education	High performance computing at North Dakota State University	2,200,000

Federal State Fiscal Recovery Fund		
Agency	**Description**	**Federal Funds**
State Board of Higher Education	Higher education capital projects, including $25 million for Hartnett Hall at Minot State University, $50 million for Merrifield Hall at the University of North Dakota, and $38 million for a polytechnic building at Bismarck State College	113,000,000
State Board of Higher Education	Equipment and personnel for hyperbaric oxygen therapy at the University of North Dakota School of Medicine and Health Sciences	2,104,121
State Board of Higher Education	Dakota Digital Academy	475,000
Attorney General	Establishment of a missing persons database	75,000
Attorney General	Replacement of the prosecuting case management system	1,000,000
Information Technology Department	Funding for radios compatible with the statewide interoperable radio network, including $2,612,000 for the Highway Patrol and $2,057,384 for the Department of Corrections and Rehabilitation	4,669,384
Information Technology Department	Grant to the North Dakota Stockmen's Association for the conversion of a paper-based brand inspection program to an electronic system	401,000
Adjutant General	State active-duty software replacement project	450,000
Judicial branch	Supreme Court docket system replacement project	2,020,000
Office of Administrative Hearings	Development of a web-based document management system	20,000
Department of Human Services	Retention bonuses for direct service professionals serving clients with intellectual or developmental disabilities	2,500,000
Department of Human Services	Funding for long-term care facilities, including nursing facilities ($20.8 million), basic care facilities ($2.95 million), and assisted living facilities ($1.25 million)	25,000,000
Department of Human Services	Funding for western North Dakota behavioral health ($4 million), child care services ($17 million), Medicaid eligibility system upgrades ($5 million), and substance use disorder treatment voucher system grants ($3 million)	29,000,000
Department of Human Services	North Dakota Pregnancy Resource Network	1,500,000
Adjutant General	Camp Grafton housing enhancements	2,000,000
Department of Veterans' Affairs	Grant to assist in the construction of the $8 million Fisher House at the Fargo VA Medical Center	500,000
Department of Veterans' Affairs	Improve and expand veteran medical transportation	147,000
Bank of North Dakota	Fuel production facility loan forgiveness program	21,000,000
Department of Commerce	Transfer to the innovation technology loan fund program	5,000,000
Department of Commerce	Hydrogen development grants	20,000,000
Department of Commerce	Autonomous agriculture matching grant program to accelerate innovation and research within the autonomous agriculture industry, also known as the Grand Farm Initiative	10,000,000
Department of Commerce	Local workforce development incentive grant program to support efforts to recruit, retain, or retrain workers. Requires 25 percent matching funds from local sources.	15,000,000
Department of Commerce	Technical skills training grant program for the expansion of successful workforce training programs to allow businesses to establish or expand internal training and training for new workers and workforce innovation grant programs to focus on attracting skilled workers to the state from targeted communities and regions	5,000,000
State Board of Higher Education	Establishment of a Center for Space Education and Research at the University of North Dakota	10,000,000
Aeronautics Commission	Airport grants	5,000,000
Total		$570,035,705

Department of Transportation

The bill also includes a $100 million appropriation in Section 2 from federal funds in excess of the regular federal funding amounts included in the Department of Transportation's 2021-23 biennium budget, to the Department of Transportation for road and bridge construction projects for the remainder of the 2021-23 biennium.

Appropriation Recommendation Summary

The following is a summary of the committee's appropriation recommendations:

Bill Draft	Federal State Fiscal Recovery Fund	Federal Coronavirus Capital Projects Fund	Federal Coronavirus Relief Fund	Other Federal Funds	Special Funds	Total
21.1104.06000	$383,474,000	$113,276,228	$12,400,000	$0	$0	$509,150,228
21.1130.02000	100,000	0	0	92,168,583	13,094,159	105,362,742
21.1137.01000	570,035,705	0	0	100,000,000	0	670,035,705
Total	$953,609,705	$113,276,228	$12,400,000	$192,168,583	$13,094,159	$1,284,548,675

Bill Draft 21.1135.02000

The committee recommends a bill draft [21.1135.02000] to provide legislative intent to reduce integrated formula payments to school districts eligible to receive ESSER funds by a one-time amount of $88 per student based on fall 2021 enrollment for information technology upgrades to the state automated reporting system and the statewide longitudinal data system. Legislative intent is provided that the Department of Public Instruction use ESSER funds appropriated to the department by the 2021 Legislative Assembly to reimburse eligible school districts for the amount of integrated formula payments withheld.

Bill Draft 21.1134.01000

The committee recommends House Bill No. 1507 to amend North Dakota Century Code Chapter 15.1-21 to require school districts to offer computer science and cybersecurity courses to students.

INTERIM SENATE APPROPRIATIONS COMMITTEE

The Chairman of the Legislative Management appointed an Interim Senate Appropriations Committee and assigned the committee the following duties:

- Review proposals to use funding from the federal State Fiscal Recovery Fund established through the federal American Rescue Plan Act of 2021 and develop recommendations for the use of funds.
- Review legislative appropriations from the federal Coronavirus Capital Projects Fund and recommend any necessary changes to existing appropriations from the fund and develop recommendations regarding the use of any remaining available funding.
- Consider any other budget adjustments requiring legislation that are necessary before the 2023 regular legislative session.

Committee members were Senators Ray Holmberg (Chairman), Brad Bekkedahl, Kyle Davison, Dick Dever, Robert Erbele, Joan Heckaman, David Hogue, Karen K. Krebsbach, Tim Mathern, Dave Oehlke, Nicole Poolman, David S. Rust, Ronald Sorvaag, and Terry M. Wanzek.

STATE FISCAL RECOVERY FUND

Background

The American Rescue Plan Act of 2021 included $219.8 billion for the State Fiscal Recovery Fund. Of this amount, $195.3 billion is available to states, $25.5 billion will be distributed equally to the states and District of Columbia, resulting in $500 million allocated to each state. After an additional $755 million is distributed to the District of Columbia, the remaining $169 billion will be distributed to the states based on each state's share of seasonally adjusted unemployed persons for the 3-month period ending December 2020. North Dakota's allocation from the State Fiscal Recovery Fund is $1,007,502,515. The funds have been received and are on deposit in the Bank of North Dakota.

Allowable Uses

Allowable uses of funding from the State Fiscal Recovery Fund, which must be obligated by December 31, 2024, and spent by December 31, 2026, are as follows:

- Costs related to the Coronavirus (COVID-19) pandemic, including assistance to households, small businesses, nonprofits, and affected industries, such as tourism, travel, and hospitality;
- Provide premium pay of up to $13 per hour in addition to base pay, up to a maximum of $25,000, to state, territory, or tribal government workers who perform essential work during the COVID-19 pandemic, or provide grants to employers with employees who perform essential work, which is defined as work needed to maintain continuity of operations of critical infrastructure and other sectors designated by the Governor as critical to protect the health and well-being of residents;
- The cost of providing government services to the extent there was lost revenue as a result of the COVID-19 pandemic; and
- Investment costs in water, sewer, and broadband infrastructure.

States may not use the funding to reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which funds received have been spent or returned. States cannot use funds to make payments to pension plans. The Office of Management and Budget submitted $1.8 billion of revenue loss as of December 2020; therefore, the funds should be able to be used for the cost of government services.

CORONAVIRUS CAPITAL PROJECTS FUND

Background

The American Rescue Plan Act of 2021 appropriated $10 billion to the United States Department of the Treasury for a Coronavirus Capital Projects Fund to provide payments to states, territories, freely associated states, and tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19)."

North Dakota received an initial allocation of $112,473,563 from the Coronavirus Capital Projects Fund. North Dakota's allocation was later increased to $113,276,228. The Legislative Assembly, based on initial information provided regarding the fund, approved using $106,474,000 of the funding for the following projects for the 2021-23 biennium:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Department of Career and Technical Education	Statewide area career center initiative grant program	70,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total - 2021-23 appropriations		$106,474,000

Eligible Uses Based on September 2021 Guidance

The September 2021 guidance provides grant funds may be used for critical capital projects that directly enable work, education, and health monitoring in response to COVID-19. To be eligible for funding, a project must meet all of the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring;
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. The capital project is designed to address a critical need of the community to be served by it.

PROPOSALS RECEIVED

The committee reviewed proposals from members of the Legislative Assembly and the Governor for the use of American Rescue Plan Act funds and for other budget adjustments as detailed in this section.

Coronavirus Capital Projects Fund

The committee reviewed a proposal to adjust the funding source of certain projects that received an appropriation from the Coronavirus Capital Projects Fund during the 2021 regular legislative session. The proposal would change the funding source of nine projects from the Coronavirus Capital Projects Fund to federal state fiscal recovery funds.

Federal State Fiscal Recovery Funds

The committee reviewed 156 proposals to use federal state fiscal recovery funds as follows:

Category	Proposals Received
Infrastructure	The committee reviewed 15 proposals to use federal state fiscal recovery funds for infrastructure projects, including natural gas pipelines, roads, water control, and other projects.
Aid to political subdivisions	The committee reviewed 33 proposals to use federal state fiscal recovery funds to provide aid to political subdivisions for road and bridge projects, local park district infrastructure projects, water and sewer projects, and other purposes.
Capital improvements	The committee reviewed 34 proposals to use federal state fiscal recovery funds for capital projects for state agency and institution building projects, deferred maintenance, and other purposes.
Information technology	The committee reviewed 19 proposals to use federal state fiscal recovery funds for information technology projects, including cybersecurity enhancements, state agency software projects, and other purposes.
Economic Development	The committee reviewed 29 proposals to use federal state fiscal recovery funds for economic development, including research programs, workforce initiatives, business incentives, and other purposes.
Other proposals	The committee reviewed 26 proposals to use federal state fiscal recovery funds for other purposes, including human service programs, long-term care facility assistance, child care programs, and other purposes.

Other Budget Adjustments

The committee reviewed 27 proposals for other budget adjustments. The proposals included adjustments to federal spending authority for agencies, the authorization of new full-time equivalent (FTE) positions, additional authority to allow for the distribution of federal local fiscal recovery funds, and other purposes.

COMMITTEE RECOMMENDATIONS

The committee recommends the following bill drafts:

1. A bill draft [21.1108.03000] to:

   - Adjust the funding source of the following projects from the Coronavirus Capital Projects Fund to federal state fiscal recovery funds:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total		$36,474,000

   - Provide for the Coronavirus Capital Projects Fund to be allocated for career and technical education center projects ($53.3 million) and rural broadband projects ($60 million). In addition, $30 million is provided from state fiscal recovery funds for career and technical education projects.
   - Appropriate $317 million of state fiscal recovery funds to the Department of Transportation for state road and bridge projects ($200 million), county bridge projects ($100 million), and transportation funding distributions to townships ($17 million).
   - Authorize any unused federal coronavirus relief funds to be used for salary costs of the Highway Patrol, Department of Corrections and Rehabilitation, and Adjutant General.

2. A bill draft [21.1131.04000] to:

   - Provide federal funds authorization of $3,014,975 to the State Treasurer for additional local fiscal recovery fund allocations to political subdivisions.
   - Continue the authorization for the University of North Dakota to use $750,000 of Bank of North Dakota profits for campus network upgrades.
   - Provide an appropriation of $537,297 to the Attorney General from the Attorney General refund fund for salary equity increases for State Crime Laboratory employees.
   - Provide an appropriation of $10 million to the Department of Public Instruction from withheld integrated formula payments for information technology upgrades.
   - Authorize 16 FTE positions for the Department of Human Services for the county social and human services project.
   - Authorize the Department of Human Services to transfer funding between line items in House Bill Nos. 1394 and 1395 (2021).
   - Provide federal funds authority of $92,453,608 to the Department of Human Services for federal medical assistance percentage adjustments and for other various programs.
   - Provide an appropriation from the Bank of North Dakota operating fund to the bank for salaries and wages.
   - Provide funding of $1,806,862 from the Retirement and Investment Office operating fund to the agency for six new FTE positions and other salary adjustments.
   - Provide an appropriation of $10 million from the Department of Public Instruction operating fund from withheld integrated formula payments and $100,000 from the State Fiscal Recovery Fund to the department for information technology upgrades and for information technology upgrade funding in lieu of withholding from schools ineligible to receive allocations from the federal Elementary and Secondary School Emergency Relief Fund.
   - Amend Section 9 of Chapter 46 of the 2021 Session Laws relating to grant requirements for the beyond visual line of sight unmanned aircraft system program.

3. Senate Bill No. 2345 to:

- Appropriate federal state fiscal recovery funds to the following state agencies:

Agency	Purpose	Amount
Industrial Commission	Grants for a natural gas pipeline project to transport natural gas from western to eastern North Dakota	$150,000,000
Industrial Commission	Abandoned oil well conversion to water supply grant program	3,200,000
Department of Water Resources	Water infrastructure projects	75,000,000
Department of Corrections and Rehabilitation	Stipends to county jails for costs to house inmates sentenced to the department but deferred admission	4,800,000
Parks and Recreation Department	Grants to local park districts to renovate and upgrade existing outdoor facilities with a $1 to $1 matching requirement	5,000,000
Main Research Center	Capital projects at the Carrington, Dickinson, Hettinger, and Central Grasslands Research Extension Centers	8,029,000
State Department of Health	State health laboratory project	15,000,000
Department of Corrections and Rehabilitation	Free through recovery program increase in capacity	2,995,200
Parks and Recreation Department	State park projects with a minimum of $100,000 spent on projects at each park	10,000,000
Office of Management and Budget	State facility critical maintenance projects	10,000,000
Office of Management and Budget	Heating and cooling upgrades in the legislative wing of the Capitol	7,000,000
State Historical Society	State historic site repairs	950,000
North Dakota State University	Higher performance computing	2,200,000
Minot State University	Harnett Hall project	25,000,000
University of North Dakota	Merrifield Hall project	50,000,000
Bismarck State University	Polytechnic building project	38,000,000
University of North Dakota School of Medicine and Health Science	Hyperbaric oxygen therapy project	2,104,121
North Dakota University System	Dakota Digital Academy	475,000
Attorney General	Missing persons database	75,000
Attorney General	Prosecuting case management system replacement	1,000,000
Highway Patrol	Radios compatible with the statewide interoperable radio network	2,612,000
Department of Corrections and Rehabilitation	Radios compatible with the statewide interoperable radio network	2,057,384
Information Technology Department	Grant to North Dakota Stockmen's Association for brand inspection program software	401,000
Adjutant General	State active duty software replacement	450,000
Judicial branch	Replace docket system	2,020,000
Office of Administrative Hearings	Web-based document management system	20,000
Department of Human Services	Retention bonuses for direct service professionals	2,500,000
Department of Human Services	Funding to assist long-term care facilities	25,000,000
Department of Human Services	Funding for western North Dakota behavioral health ($4 million), Medicaid eligibility system upgrade ($5 million), child care services ($17 million), and substance use disorder voucher program ($3 million)	29,000,000
Department of Human Services	Grant to organization providing alternatives to abortion services	1,500,000
Adjutant General	Camp Grafton housing upgrades	2,000,000
Department of Veterans' Affairs	Grant to assist in Fisher House construction	500,000
Department of Veterans' Affairs	Improve and expand veterans' medical transportation	147,000
Bank of North Dakota	Fuel production facility grant program	21,000,000
Department of Commerce	Transfer to the innovation technology loan fund	5,000,000
Department of Commerce	Hydrogen development grants	20,000,000
Department of Commerce	Autonomous agriculture matching grant program	10,000,000

Agency	Purpose	Amount
Department of Commerce	Local workforce development incentive grant program with 25 percent local match requirement	15,000,000
Department of Commerce	Technical skills training grant program	5,000,000
University of North Dakota	Space education and research	10,000,000
Aeronautics Commission	Airport grants	5,000,000
Total		$570,035,705

- Appropriate $100 million of additional federal funds to the Department of Transportation. The funds are not subject to the excess federal funds requirements in House Bill Nos. 1015 and 1431 (2021).

4. Senate Bill No. 2346 to authorize the Department of Public Instruction to withhold integrated formula payments to school districts to be used for information technology project upgrades to the state automated reporting system and the statewide longitudinal data system.

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 legislative sessions. Legislative rules also are reviewed and updated under this authority. The Legislative Management also delegated to the committee the Legislative Management's responsibility under Section 46-02-05 to determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws; and the 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.

Committee members are Senators Rich Wardner (Chairman), Joan Heckaman, Ray Holmberg, Jerry Klein, Larry Luick, and Erin Oban and Representatives Joshua A. Boschee, Kim Koppelman, Scott Louser, Alisa Mitskog, and Chet Pollert.

SPECIAL OR RECONVENED SESSION ARRANGEMENTS

At the time of the committee's most recent meeting, the Governor had not committed to calling a special session for legislative redistricting. The committee approved arrangements to accommodate either a special or reconvened session. The committee reviewed four areas of consideration for the special or reconvened session--legislative rules, session employees, a bill draft regarding printing services, and miscellaneous matters.

Legislative Rules

The committee received testimony regarding the legislative rules amendments adopted during previous special sessions. The amendments primarily addressed the introduction of measures, length of time to consider a measure after it is reported from committee, length of time to reconsider a measure, and special committees during the special session. The committee recommends changes to legislative rules which are substantively similar to those rules amendments adopted during the 2001 and 2011 special sessions. The committee recommends creation of Joint Rules 303 and 304; amendment of Senate Rules 318(4), 333, 337, 347, 401(1), 402, 403, 501, 504, and 601; House Rules 318(4), 337, 347, 401(1), 402, 403, 501, 504, and 601; and Joint Rules 202, 207, 302, and 501(4); and repeal of Senate Rule 502, House Rule 502, and Joint Rule 208.

The recommended rules provide bills and resolutions, other than bills and resolutions introduced by the Legislative Management, must be introduced through the Delayed Bills Committee of the house of introduction. The requirement for approval by the Delayed Bills Committee is intended to limit introduction of measures to those measures of significant importance for consideration during the special or reconvened session, which is intended to address legislative redistricting and appropriations of certain federal funds received by the state. By requiring measures to be introduced through the Delayed Bills Committees, bills and resolutions would be screened to assure promotion of the session objectives.

The recommended rules eliminate specific meeting days for committees. Instead, the rules amendments allow the committee chairman or a majority of committee members to call a committee meeting. Specifically listing the days on which committees may meet could create misconceptions if the committees met on other than regularly scheduled days.

The recommended rules authorize a measure to be considered on the same day it is reported from committee or placed on the consent calendar. The normal time frame for consideration of a measure is shortened from the day after a measure is reported from committee or placed on the consent calendar.

The recommended rules allow an amendment made upon second reading in the Senate of a bill providing for redistricting of the Legislative Assembly to be proposed as a concept. Upon approval of the concept, the redistricting bill would be rereferred to the Joint Redistricting Committee for preparation by the Legislative Council of the exact language required for the amendment. The Joint Redistricting Committee then would report the amendment back to the Senate for action. This change is intended to limit the time taken for drafting and proofing exact legal descriptions of legislative districts to those floor amendments supported by a majority of the Senate members.

The recommended rules authorize a measure to be transmitted from one house to the other immediately after approval unless a Majority or Minority Leader gives notice of intention to reconsider. If notice is given, the measure cannot be transmitted until the end of that day. Without this amendment, the normal procedure would be to retain the measure until the end of the next legislative day.

The recommended rules allow either house to consider receding more than once on the same day before a conference is called. Without the amendment, reconsideration could not be made until the next legislative day.

The recommended rules require the return of a fiscal note within 1 day of the request instead of 5 days. This recommendation recognizes the shortened time frames for considering bills and resolutions during the special or reconvened session.

The recommended rules establish a Joint Legislative Redistricting Committee and a Joint Technical Corrections Committee and provide for the House and Senate Appropriations Committees and procedural committees to meet during the special or reconvened session. The Joint Legislative Redistricting Committee would be responsible for all bills and resolutions relating to redistricting. The Joint Technical Corrections Committee would be responsible for all bills and resolutions relating to other substantive matters except appropriations. Voting in joint committees would be by house and would operate similarly to voting in conference committees.

Session Employees

The committee reviewed the employee positions filled during the 2011 special session. The committee determined the House Employment Committee may hire up to 11 employees and the Senate Employment Committee may hire up to 10 employees for the special or reconvened session. The rates of pay for employees during the special or reconvened session would be the compensation levels established by Senate Concurrent Resolution No. 4003 (2021).

Printing Services

During the 2019-20 interim, the committee authorized the Legislative Council to solicit bids for printing legislative materials for the 67th Legislative Assembly. Despite soliciting bids twice, no bids were received. Central Duplicating Services within the Office of Management and Budget provided printing for the 67th Legislative Assembly and will provide printing during the special or reconvened session. The committee received testimony noting several sections of the Century Code could be clarified to authorize Central Duplicating Services to provide legislative printing services. The committee recommends Senate Bill No. 2347 providing the legislative branch the option of having legislative materials printed by Central Duplicating Services or soliciting bids for a private printing vendor. This bill is recommended for consideration during the special or reconvened session so the Legislative Assembly may consider contracting with Central Duplicating Services during the 2021-22 interim to print materials for the 68th Legislative Assembly.

Miscellaneous Matters

The committee recognizes the nature of the special or reconvened session will be limited in scope. Many services or items normally available during a regular session would not be feasible or economical during the special or reconvened session. The committee received testimony the bill and journal room has not been open to the public during special sessions. Committee hearings often are called on short notice during special or reconvened sessions, and printed schedules would become outdated quickly. Instead, measures, journals, and other documents have been made available on the legislative branch website and may be available through the North Dakota Legislative Daily application. Information on hearings also will be available on kiosks and signs throughout the Capitol. Journals typically have been printed after special sessions adjourn. The committee did not recommend any changes to these practices. The Legislator's Automated Work Station (LAWS) will be available to legislators during the special or reconvened session. Committee schedules and documents will continue to be available online, and the public may view committee meetings and floor sessions online as has been the practice since early 2020.

REDISTRICTING COMMITTEE

The Redistricting Committee was assigned the responsibility to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. House Bill No. 1397 (2021) required the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. The bill provided:

1. The committee must consist of an equal number of members from the Senate and the House of Representatives appointed by the Chairman of the Legislative Management.
2. The committee shall ensure any legislative redistricting plan submitted to the Legislative Assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the Legislative Assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the Legislative Management by November 30, 2021.
4. A draft of the legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly is an exempt record as defined in North Dakota Century Code Section 44-04-17.1 until presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly, at which time the presented or distributed draft is an open record. If possible, the presented or distributed draft must be made accessible to the public on the legislative branch website such as through the use of hyperlinks in the online meeting agenda. Any version of a redistricting plan other than the version presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly is an exempt record.
5. The Chairman of the Legislative Management shall request the Governor to call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2022 primary election and to address any other issue that may be necessary.

Committee members were Representatives Bill Devlin (Chairman), Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson, Mike Nathe, and Austen Schauer and Senators Brad Bekkedahl, Randy A. Burckhard, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, and Ronald Sorvaag.

BACKGROUND

Redistricting History in North Dakota

1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided:

1. The Legislative Assembly must apportion itself after each federal decennial census; and
2. If the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment.

Because the 1961 Legislative Assembly did not apportion itself following the 1960 Census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the Majority and Minority Leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined the plan was unconstitutional and the 1931 plan continued to be law.

1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of Article II of the Constitution of North Dakota were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan also was held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.

1965

A conference committee during the 1965 legislative session consisting of the Majority and Minority Leaders of each house and the Chairmen of the State and Federal Government Committees produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, four districts slightly over 5 percent, and two districts exceeding 9 percent.

1971

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued the multimembership violated Section 29 of Article II of the Constitution of North Dakota, which provided each senatorial district "shall be represented by one senator and no more." The court held Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

In 1971 the Legislative Assembly failed to redistrict itself after the 1970 Census and an action was brought in federal district court which requested the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional, and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

1973-75

In 1973 the Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council Chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F.Supp. 371 (1974) made the "Dobson" plan permanent. However, on appeal, the United States Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F.Supp. 649 (1975), the court held the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

1981

In 1981 the Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council Chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee.

The committee considered a total of 12 legislative redistricting bills. The reconvened session adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities, and each elected two senators and four representatives at large.

1991-95

In 1991 the Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative redistricting study. The committee consisted of eight senators and eight representatives. The Legislative Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 (1991) split the two Air Force bases so neither base would be included with another district to form a multisenator district. Senate Bill No. 2598 (1991) placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

In a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. The bill was heard by the Joint Legislative Redistricting Committee. The bill also was amended to provide any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of 4 years, to provide the senator from a new district created in Fargo had to be elected in 1992 for a term of 2 years, and to include an effective date of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

The Legislative Council again contracted with Mr. Hickok to provide services for the subdistrict study. After conducting the subdistrict study, the interim committee recommended House Bill No. 1050 (1993) to establish House subdistricts

within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. In 1993 the Legislative Assembly did not adopt the subdistricting plan.

In 1995 the Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

2001

In 2001, the Legislative Assembly budgeted $200,000 for a special session for redistricting and adopted House Concurrent Resolution No. 3003, which provided for a study and the development of a legislative redistricting plan or plans for use in the 2002 primary election. The Legislative Council appointed an interim Legislative Redistricting Committee consisting of 15 members to conduct the study. The Legislative Redistricting Committee began its work on July 9, 2001, and submitted its final report to the Legislative Council on November 6, 2001.

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses. In addition, each caucus was provided a color printer.

The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended Senate Bill No. 2456 (2001), which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

In a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district plan included in Senate Bill No. 2456 (2001) with amendments, most notably amendments to the provisions relating to the staggering of terms. The bill was heard by the Joint Legislative Redistricting Committee. The term-staggering provisions provided a senator and a representative from an odd-numbered district must be elected in 2002 for a term of 4 years and a senator and a representative from an even-numbered district must be elected in 2004 for a term of 4 years. The bill further included provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. In *Kelsh v. Jaeger*, 641 N.W.2d 100 (2002), the North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

2011

In 2011, the Legislative Assembly passed House Bill No. 1267 (2011), which directed the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The Legislative Redistricting Committee consisted of 16 members and held its first meeting on June 16, 2011. The committee concluded its work on October 12, 2011, and submitted its final report to the Legislative Management on November 3, 2011.

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased an additional computer and redistricting software license for the shared use of the members of those groups. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts because the committee members generally agreed potential redistricting plans should be based upon the cores of existing districts.

The committee considered increasing the number of districts and received information regarding the estimated cost of a district based on a 77-day legislative session, which amounted to approximately $1,190,170 for the decade. The committee elected to maintain a 47-district plan and determined the plan should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible and preserve the boundaries of the Indian reservations.
3. Provide for a population variance of 9 percent or less.

The committee recommended a bill to repeal the existing redistricting plan, establish 47 legislative districts, provide for the staggering of terms of members of the Legislative Assembly, and authorize the Secretary of State to modify primary election deadlines and procedures if any delays arose in implementing the redistricting plan. Under the 47-district plan recommended by the committee, the ideal district size was 14,310. The population of the largest district was 14,897, which was 4.10 percent over the ideal district size, and the population of the smallest district was 13,697, which was 4.28 percent below the ideal district size, providing for an overall range of 8.38 percent. The plan included 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district.

The committee also recommended a bill draft to the Legislative Management which would have required each legislative district contain at least six precincts. The Legislative Management rejected the portion of the committee's report relating to this bill draft.

In a special session held November 7-11, 2011, the Legislative Assembly adopted the committee's 47-district plan included in House Bill No. 1473 (2011) with minor amendments to legislative district boundaries and a change in the effective date from December 1 to November 25, 2011. The bill was heard by the Joint Legislative Redistricting Committee and approved by the 62nd Legislative Assembly by a vote of 60 to 32 in the House and 33 to 14 in the Senate.

NORTH DAKOTA REDISTRICTING LAW

Constitutional Provisions

Section 1 of Article IV of the Constitution of North Dakota provides the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." The section provides districts ascertained after the 1990 federal decennial census must "continue until the adjournment of the first regular session after each federal decennial census, or until changed by law."

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." This section requires the apportionment of one senator and at least two representatives to each senatorial district. This section also provides that two senatorial districts may be combined when a single-member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

Statutory Provisions

In addition to the constitutional requirements, Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. The plan must ensure legislative districts be as nearly equal in population as is practicable and population deviation from district to district be kept at a minimum. Additionally, the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years. House Bill No. 1473 (2011) repealed Sections 54-03-01.8 and 54-03-01.10 and created a new section regarding the staggering of terms. Section 54-03-01.13 provides senators and representatives from even-numbered districts must be elected in 2012 for 4-year terms; senators and representatives from odd-numbered districts must be elected in 2014 for 4-year terms, except the

senator and two representatives from District 7 must be elected in 2012 for a term of 2 years; the term of office of a member of the Legislative Assembly elected in an odd-numbered district in 2010 for a term of 4 years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012, subject to certain change in residency exceptions; the term of office of a member of the Legislative Assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than 25 percent of the ideal district population terminates on December 1, 2012; and a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a 2-year term of office.

Section 16.1-01-02.2 pertains to procedures regarding special elections. As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, the Legislative Assembly amended Section 16.1-01-02.2 during the November 1991 special session. The amendment provided "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan." This 30- to 50-day timetable was later amended to 90 days in 2007.

Section 16.1-03-17 provides if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the political parties in the newly established precincts and districts shall reorganize as closely as possible in conformance with Chapter 16.1-03 to assure compliance with primary election filing deadlines.

FEDERAL REDISTRICTING LAW

Before 1962, the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

Population Equality

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held the equal protection clause of the 14th Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population--the total state population divided by the number of districts--of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions--*Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "[v]ery likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice William J. Brennan's dissents in *Gaffney* and *White* argued the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted the majority opinions provided states would be required to justify overall ranges of 10 percent or more. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the reasons given, which included an absence of a particular racial or political group whose

power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded the constitutional policy of ensuring each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14th Amendment which requires justification by the state. However, the Court further concluded a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city--a regional entity. However, the Court held the city failed to sustain its burden of justifying the large deviation.

In a federal district court decision, *Quilter v. Voinovich*, 857 F.Supp. 579 (N.D. Ohio 1994), the court ruled a legislative district plan with an overall range of 13.81 percent for House districts and 10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated in the previous district court decision, the district court mistakenly held total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.

Although the federal courts generally have maintained a 10 percent standard, a legislative redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. In *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), a federal district court in Georgia found two legislative redistricting plans adopted by the Georgia General Assembly which had an overall range of 9.98 percent violated the "one person one vote" principle. Although legislators and redistricting staff indicated they prepared the plans under the belief that an overall range of 10 percent would be permissible without demonstrating a legitimate state interest, the district court found the objective of the plan, protection of certain geographic areas and protection of incumbents from one party did not justify the deviations from population inequality, particularly in light of the fact that plans with smaller deviations had been considered. With respect to protection of incumbents, the court indicated while it may be a legitimate state interest, in this case the protection was not accomplished in a consistent and neutral manner. Although protection of political subdivision boundaries is viewed as a traditional redistricting principle, the court held regional protectionism was not a legitimate justification for the deviations in the plans. The United States Supreme Court upheld the district court opinion in *Larios*.

In *Evenwel v. Abbot*, 136 S. Ct. 1120 (2016), the Texas Legislature redrew Senate districts based on total population, rather than registered voter population. Opponents of the redistricting plan argued the use of total population, rather than voter population, gave voters in districts with a large immigrant population a disproportionately weighted vote compared to voters in districts with a small immigrant population. The Supreme Court held states may, but are not required to, use total population when drawing districts to comply with the one-person, one-vote principles under the equal protection clause.

In *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016), the Supreme Court upheld a redistricting plan with an overall deviation of 8.8 percent. The Supreme Court held even though partisanship may have played a role in developing the plan "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act." The plaintiffs failed to meet the burden of showing it was more probable than not that the deviation predominately resulted from the use of illegitimate redistricting factors.

Case law has established if a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

Partisan Gerrymandering

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated political gerrymandering is justiciable. However, the Court determined the challengers of the legislative redistricting plan failed to prove the plan denied them fair representation. The Court stated a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 2004 a sharply divided Supreme Court addressed a challenge to a congressional redistricting plan adopted in Pennsylvania. In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), four of the justices concluded partisan gerrymandering cases are nonjusticiable due to a lack of judicially discernible and manageable standards for addressing the claims. One other justice concurred in the opinion, but on other grounds, and the remaining four justices issued three dissenting opinions. Despite the challenge being dismissed, a majority of the court--the four dissenting justices and the one justice concurring in the decision to dismiss the claim--continued to maintain partisan gerrymandering cases may be adjudicated by the courts.

The Supreme Court again issued a divided opinion 2 years later in L*eague of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). In that decision, six justices wrote opinions and five justices agreed partisan gerrymandering cases are justiciable. However, the court did not agree on a standard for addressing claims and the partisan gerrymandering claim was dismissed.

The question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court in 2019. In the consolidated case of *Rucho v. Common Cause*, 139 S. Ct. 2428 (2019), the congressional redistricting maps for North Carolina and Maryland were challenged as unconstitutional partisan gerrymanders. In *Rucho*, the Supreme Court held "partisan gerrymandering claims present political questions beyond the reach of the federal courts." The Court further stated, "the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

Instances in which state courts have addressed partisan gerrymandering include *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (Fla. 2015). In this case, the challengers of the plan alleged the congressional redistricting plan was drawn to favor incumbent lawmakers and the Republican Party in violation of the Fair Districts Amendment to the Constitution of Florida, which prohibits political consideration in redistricting. The Florida Supreme Court upheld the trial court's findings that the map was tainted by the unconstitutional intent alleged and the Legislature was required to redraw the boundaries of several districts.

Partisan gerrymandering also was addressed at the state level in *League of Women Voters of Pennsylvania v. Commonwealth*, 644 Pa. 287 (2018). In this case, the challengers of the plan alleged the state's 2011 congressional plan violated the Free and Equal Elections Clause of the Constitution of the Commonwealth of Pennsylvania by providing one party an unfair advantage. The Pennsylvania Supreme Court found the plan lacked compactness and split local jurisdiction boundaries to an inordinate degree. The court held application of traditional redistricting principles must be the overriding consideration when preparing a redistricting map to avoid a violation of the Free and Equal Elections Clause. The Supreme Court held the map unconstitutional and substituted the 2011 map with a remedial map drawn by a special master.

Thus, though now precluded at the federal level, partisan gerrymandering cases may be justiciable in state court.

Multimember Districts and Racial or Language Minorities

According to data compiled by the National Conference of State Legislatures, North Dakota is 1 of 10 states that have multimember districts. Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Many decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated a minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Until redistricting in the 1990s, racial gerrymandering--the deliberate distortion of boundaries for racial purposes--generally had been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district. As a result, a number of redistricting plans adopted in the 1990s were challenged by white voters on equal protection grounds and the United States Supreme Court subsequently has held several redistricting plans to be unconstitutional as a result of racial gerrymandering.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear race-conscious redistricting may not be impermissible in all cases. However, the Court held the plan to a test of strict scrutiny and required the racial gerrymander be narrowly tailored to serve a compelling state interest. The Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional. However, compliance with the Voting Rights Act and other circumstances may justify or necessitate the use of race in that manner.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, the Court indicated unless race was the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful. In addition, the Court articulated seven policies that have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

Section 5 of the Voting Rights Act requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. Section 5 of the Voting Rights Act applied to states and political subdivisions that demonstrated a history of voter discrimination.

However, in 2013, the formula used to determine which jurisdictions were subject to the preclearance requirements in Section 5 was held unconstitutional by the Supreme Court in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Thus, states and jurisdictions formerly subject to review are no longer required to submit their redistricting plans for preclearance under Section 5.

TESTIMONY AND COMMITTEE CONSIDERATIONS

Redistricting Computers and Software

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased two additional computer and redistricting software licenses for the shared use of the members of those groups. The members of the committee were encouraged to use the redistricting software to develop redistricting plans to present for the review of the committee at each meeting. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts.

Population Changes

The committee received the results of the 2020 Census on August 12, 2021. The data indicated the population in North Dakota increased by 15.8 percent over the past decade, which was the fourth largest percentage increase in state populations nationwide. The committee reviewed the changes in population between the 2010 to 2020 Census for legislative districts, counties, and cities. The majority of the population growth occurred in urban areas and in oil-producing counties, and the county with the largest percentage increase in population nationwide was McKenzie County, which increased in population by 131 percent over the past decade. Despite large gains in certain areas of the state, 30 of the state's 53 counties lost population. Population gains and losses in legislative districts varied dramatically, with some legislative districts increasing in population by more than 100 percent and others decreasing in population by more than 10 percent.

The committee discussed concerns regarding the accuracy of census data in smaller census units due to the application of differential privacy. The committee was mindful of the compressed time frames for completing redistricting as a result of delays in receiving census data.

Urban and Rural Considerations

The committee received testimony expressing concerns regarding the shift in urban and rural populations. Concerns included whether individuals living in primarily rural districts would be shifted to districts comprised of a majority of urban areas, leading to minimization of rural concerns, and whether primarily rural districts would be required to expand geographically due to population losses, leading to reduced direct access to legislators. Suggestions to address these concerns included creating subdistricts in rural districts or increasing the size of the Legislative Assembly as an attempt to preserve more existing district boundaries to lessen the impact of redistricting on rural areas of the state.

Size of the Legislative Assembly

Committee members debated whether to consider redistricting plans that would increase the size of the Legislative Assembly. The committee received information provided to the 2011 Redistricting Committee regarding the cost of a legislative district, which in 2011 amounted to an estimated $1.2 million in salaries and benefits for a 10-year period. The committee received information showing the ideal district size for a 47-district plan is 16,576, while the ideal district size for a 54-district plan, which is the maximum number of constitutionally permissible districts, is 14,428. Proponents of maintaining 47 legislative districts noted South Dakota has a larger population than North Dakota but only 35 legislative districts. The committee determined it was prudent to require proposals submitted to the committee conform with a 47-district plan, rather than allowing proposals for varying numbers of districts due to the abbreviated timeline the committee had to complete its work.

Population Deviation

The committee received information regarding the overall population deviation in past redistricting plans. Because an overall range of 10 percent generally has been considered as an acceptable level of population deviation, committee members agreed any plan recommended by the committee should have an overall range of 10 percent or less. Plans submitted to the committee for consideration generally remained within plus or minus 5 percent of the ideal district size. The final plan considered by the committee had an overall deviation of 9.87 percent, with the largest district 4.88 percent over the ideal district population and the smallest district 4.99 percent below the ideal district population.

Preservation of Political Subdivision Boundaries

The committee received testimony requesting the committee avoid splitting counties whenever possible. The final plan considered by the committee included 33 counties that were not split, 4 counties that were split only to preserve the boundaries of a reservation, 8 counties that were split only because the population of each county exceeded the ideal

district size, and 8 counties that were split for other reasons. By comparison, the redistricting plan adopted by the Legislative Assembly in 2011 had 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Reservation, 3 counties that were split only because the counties included cities that were too large for one district, and 14 counties that were split for other reasons.

Existing Districts and Communities of Interest

Committee members were encouraged to keep traditional redistricting principles in mind when completing redistricting plans. Factors other than population and preserving political subdivision boundaries which were considered in proposed plans presented to the committee included preservation of the cores of existing districts, protection of incumbents, and preservation of communities of interest. Committee members also identified district boundaries using major streets and other easily identifiable geographic features when possible.

Native American Voters and the Creation of Subdistricts

The committee solicited and received testimony from several individuals representing tribal interests, tribal nations, and Native American rights organizations, including the Executive Director of the Indian Affairs Commission and representatives of the Spirit Lake Nation, Standing Rock Sioux Tribe, Three Affiliated Tribes, Native American Rights Fund, and North Dakota Native Vote. The testimony:

- Noted the growth of Native American populations in North Dakota;
- Urged the creation of subdistricts for Native American voters to comply with the federal Voting Rights Act and prevent dilution of votes cast by Native Americans;
- Requested tribal members be considered communities of interest;
- Urged the committee to provide equitable, more direct, and more responsive representation for Native Americans;
- Urged the committee not to split reservations into multiple districts;
- Noted multiple Native American candidates have had unsuccessful campaigns for membership in the House;
- Asserted there has been a history of discrimination in North Dakota against Native Americans; and
- Asserted a history of racial bloc voting has prevented Native American voters from electing their candidates of choice.

The committee also received updates from committee members who serve on the Tribal and State Relations Committee, which met with representatives of the Turtle Mountain Band of Chippewa, Three Affiliated Tribes, and Spirit Lake Nation on their respective reservations regarding redistricting and other matters. The updates generally were consistent with the testimony presented to the Redistricting Committee. One member of the House testified in opposition to subdistricts.

The committee reviewed the 2020 Census data for tribal reservations, including the total population, total voting-age population, American Indian population, and American Indian voting-age population for each of the five reservations in North Dakota. ("American Indian" is the official United States Census Bureau designation for Native Americans.) Committee members noted the American Indian populations on the Fort Berthold Reservation and Turtle Mountain Reservation exceeded 4,145, the number required to constitute a majority of a House subdistrict with the ideal population size of 8,288. According to the Census Bureau, 5,537 American Indians live on the Fort Berthold Reservation, and 4,767 American Indians live on the Turtle Mountain Reservation. The numbers of American Indians on the Spirit Lake Reservation and the North Dakota portions of the Lake Traverse Reservation and Standing Rock Reservation are 3,134, 56, and 3,332, respectively.

The committee received information from the Legislative Council staff and testimony from others on constitutional and statutory provisions regarding the use of race in redistricting. In particular, the committee received detailed testimony and information regarding the 14th Amendment, the federal Voting Rights Act, and caselaw applying them to multi-member and single-member districts. The testimony and information included in-depth discussions of the *Gingles* preconditions and the circumstances under which majority-minority districts or subdistricts are required under federal law. The committee also received information regarding *Grinnell v. Sinner*, a case in which Native Americans sued Governor George Sinner and other officials alleging the Voting Rights Act required North Dakota's 1991 redistricting plan to include a subdistrict for Native Americans in District 4. The plaintiffs lost the case because they were unable to meet the first *Gingles* precondition based on the Native American population in District 4 in the 1990 Census. According to the Census Bureau, 2,999 Native Americans lived on the Fort Berthold Reservation in 1990. The ideal district population for North Dakota based on the 1990 Census was 13,037, and the ideal subdistrict population was 6,518. The committee also received information regarding the creation of two Native American-majority subdistricts in South Dakota and the litigation concerning the subdistricts.

The committee engaged in several discussions regarding subdistricts. Some committee members expressed discomfort with drawing subdistrict boundaries based on race, a preference for court-directed subdistricts over legislatively initiated subdistricts, and concerns about having most citizens vote for two members of the House of Representatives while citizens residing in subdistricts vote for only one representative. Other committee members noted the creation of subdistricts might prevent a possible dilution of Native Americans' votes, provide communities of interest an opportunity to select their candidates of choice, and potentially stave off a court challenge to the redistricting map for which the committee had worked in an honest and transparent manner. Some committee members expressed a preference for legislatively drawn district boundaries over court-drawn boundaries that may result from litigation.

Staggering of Terms

The committee reviewed information regarding the procedures for staggering the terms of senators and representatives. The committee reviewed a bill draft that would maintain 4-year terms for members of the Legislative Assembly and:

- Require elections for senators and representatives in odd-numbered districts and subdistricts in 2022; and
- Require elections for senators and representatives in even-numbered districts in 2024, except in the following situations in which elections in 2022 would be required:

  Three or more representatives elected from even-numbered districts in 2020 are located in an even-numbered district;

  Two or more senators elected from even-numbered districts in 2020 are located in an even-numbered district;

  A member of the Legislative Assembly elected from an even-numbered district is located in an odd-numbered district, and the member does not move back into the even-numbered district and provide the requisite certification of the change of residence by February 1, 2022;

  The even-numbered district has been divided into subdistricts; and

  The 2020 population of the geographic area added to the even-numbered district since 2010 is more than 25 percent of the ideal district population.

The bill draft also would provide a member of the Legislative Assembly is deemed to "live in" the district from which the member was elected until December 1, 2022, for purposes of Section 5 of Article IV of the Constitution of North Dakota. This provision would allow the member to continue serving the district from which the member was elected even if the member is located in a different district in the 2021 redistricting map.

RECOMMENDATIONS

The committee recommends House Bill No. 1504 to establish 47 legislative districts, including subdistricts in Districts 4 and 9, and to include the provisions of the bill draft relating to the staggering of terms of members of the Legislative Assembly. The bill draft also repeals the current legislative redistricting plan, provides the Secretary of State authority to modify 2022 primary election deadlines and procedures as necessary to conduct the 2022 primary election, provides legislative intent regarding legislative district boundaries and the terms of incumbent legislators, and becomes effective upon its filing with the Secretary of State.

Under the plan recommended by the committee, the largest district has a population of 17,385 and the smallest district has a population of 15,749. Thus, the largest district is 4.88 percent over the ideal district size and the smallest district is 4.99 percent below the ideal district size, providing for an overall range of 9.87 percent. The plan includes 33 counties that were not split, 4 counties that were split only to preserve the boundaries of a reservation, 8 counties that were split because the population of each county exceeded the ideal district size, and 8 counties that were split for other reasons. Population data and maps of the proposed districts are included with this report.