

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GOVERNMENT FINANCE COMMITTEE

Thursday, November 7, 2013
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Representatives Jeff Delzer, Larry Bellew, Joshua A. Boschee, Craig Headland, Rick Holman, Lisa Meier, Don Vigesaa, Clark Williams; Senators Dwight Cook, Gary A. Lee, Donald Schaible, Ronald Sorvaag, Rich Wardner

Members absent: Representatives Bette Grande, Kylie Oversen; Senator Terry M. Wanzek

Others present: Blair Thoreson, State Representative, Fargo
See [Appendix A](#) for additional persons present.

It was moved by Senator Wardner, seconded by Representative Meier, and carried on a voice vote that the minutes of the July 30, 2013, meeting be approved as distributed.

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

Ms. Pam Sharp, Director, Office of Management and Budget, presented information ([Appendix B](#)) regarding the status of the general fund and other state budget information, including 2011-13 biennium general fund turnback, the 2013-15 biennium general fund revenue forecast by month, estimated oil tax collections by month for the 2013-15 biennium, and the current balances of major state funds. She presented the following information on the status of the general fund for the 2013-15 biennium:

Unobligated general fund balance - July 1, 2013		\$1,396,059,186
Balance obligated for unspent emergency appropriation authority		165,874,199
Balance obligated for authorized carryover from the 2011-13 biennium		89,503,462
Total beginning general fund balance - July 1, 2013		\$1,651,436,847
Add		
General fund collections through September 2013	\$1,033,290,972	
Forecasted general fund revenue for the remainder of the 2013-15 biennium	4,525,958,450	
Total revenues		5,559,249,422
Total available		\$7,210,686,269
Less		
Legislative appropriations - One time	(\$2,433,567,701)	
Legislative appropriations - Ongoing	(4,429,019,653)	
Authorized carryover from the 2011-13 biennium	(89,503,462)	
2013-15 emergency appropriations utilized in the 2011-13 biennium	163,812,041	
Total appropriations		(6,788,278,775)
Estimated ending general fund balance - June 30, 2015		\$422,407,494 ¹

¹Pursuant to North Dakota Century Code Section 54-27.2-02, any end-of-biennium balance in excess of \$65 million must be transferred to the budget stabilization fund, up to a cap of 9.5 percent of general fund appropriations.

In response to a question from Representative Williams, Ms. Sharp said biennium to date motor vehicle excise tax collections are 15.4 percent less than forecasted. However, she said, motor vehicle excise tax collections are 21.4 percent higher than the same time period during the 2011-13 biennium. She said the 2013-15 biennium forecast for motor vehicle excise tax collections may have been too aggressive.

In response to a question from Representative Delzer, Ms. Sharp said even though oil tax collections have been more than forecasted, the Office of Management and Budget (OMB) is not reflecting any variance between

forecasted and actual oil tax deposits in the general fund. She said oil tax collections deposited in the general fund are limited to \$300 million for the biennium, and any positive variance in collections now would be offset by negative variances in future months.

In response to a question from Representative Holman, Ms. Sharp said the forecast for oil production is estimated to begin the 2013-15 biennium at 830,000 barrels per day and increase to 850,000 barrels per day by the end of the biennium.

General Fund Turnback

Ms. Sharp presented information on the 2011-13 biennium unspent general fund appropriations by agency. She said 2011-13 unspent general fund appropriation authority totaled \$50.1 million, which was \$30.3 million more than the estimate of \$19.8 million. She said the Department of Public Instruction had turnback of \$11.9 million, of which approximately \$10 million related to mill levy reduction grants. She said the Department of Human Services had turnback of \$14 million related to long-term care savings.

In response to a question from Representative Delzer, Ms. Arvy Smith, Deputy State Health Officer, State Department of Health, said the department had approximately \$600,000 of general fund turnback for the 2011-13 biennium related to vaccines. She said the turnback was due to some local public health units choosing not to be a part of a universal vaccine program and due to lower than anticipated demand for the HPV vaccine.

Chairman Delzer asked the Legislative Council staff to contact the Department of Transportation regarding the reason for the department's 2011-13 biennium general fund turnback and to provide the information to the committee.

Balances of Major State Funds

Ms. Sharp presented the following information regarding the balances of major state funds as of September 30, 2013:

Budget stabilization fund	\$583,545,799
Legacy fund	\$1,422,958,434
Foundation aid stabilization fund	\$359,015,963
Property tax relief fund	\$315,210,000

In response to a question from Representative Delzer, Ms. Sharp said approximately \$80 million of oil and gas tax collections per month are deposited in the legacy fund.

In response to a question from Representative Delzer, Ms. Sharp said the funding of \$315.2 million currently in the property tax relief fund will be used during the 2013-15 biennium. She said an additional \$341.8 million of oil and gas tax collections will be deposited in the fund for property tax relief during the 2015-17 biennium.

In response to a question from Senator Wardner, Ms. Sharp said by the end of the 2013-15 biennium, approximately \$657 million is anticipated to be available in the property tax relief fund available for property tax relief during the 2015-17 biennium.

Revenue Sources and Distributions for Major State Funds

Mr. Adam Mathiak, Fiscal Analyst, Legislative Council, presented a memorandum entitled [Revenue Sources and Distributions for Major State Funds for the 2013-15 Biennium](#). He said the memorandum provides an overview of estimated major state revenue collections during the 2013-15 biennium, including how the revenue collections are allocated to political subdivisions and appropriated to state agencies.

In response to a question from Representative Delzer, Mr. Mathiak said 25 percent of revenues designated for deposit in the strategic investment and improvements fund is deposited in the legacy fund once the strategic investment and improvements fund reaches a fund balance of \$300 million. He said major revenue sources for the fund include oil and gas production taxes, oil extraction taxes, and oil and gas royalties and bonuses.

Senator Cook suggested the committee receive information regarding the effective tax rates of the oil extraction tax and oil and gas production tax, including the forecasted amount of revenue to be generated by each tax type.

Representative Headland suggested the committee receive information regarding options to balance the state budget if corporate and individual income tax collections were removed.

Chairman Delzer asked the Legislative Council staff to provide information at the next meeting regarding the common schools trust fund, including the amount of funding estimated to be distributed from the fund for state aid payments to school districts during the 2015-17 biennium.

Representative Bellew suggested the committee receive information on the general fund appropriations for K-12 education and higher education for the 2013-15 biennium.

Housing Incentive Fund

At the request of Chairman Delzer, the Legislative Budget Analyst and Auditor distributed documents ([Appendix C](#)) containing various building permit and housing statistics for the state and selected cities.

Chairman Delzer asked the Legislative Council staff to arrange for information to be provided at a future meeting regarding the effect of new construction on local property taxes.

Ms. Jolene Kline, Acting Executive Director, Housing Finance Agency, presented information ([Appendix D](#)) regarding the housing incentive fund. She said the fund was established to assist in the development of multifamily rental housing units to be occupied by essential service workers and low- to moderate-income level families. She said the fund for the 2013-15 biennium consists of \$15.4 million of general fund appropriations and up to \$20 million of contributions from private entities. She said private entities are eligible to receive an income tax credit for any amounts contributed to the fund.

Ms. Kline said funds were awarded during two separate application periods in 2013. She said during the first round of applications, a total of 18 projects received support totaling \$20.4 million. She said one project that was awarded \$1.5 million in funds was discontinued, and the funding was reallocated during the second round of applications. She said during the second round of applications, a total of 16 projects were awarded support totaling \$16.5 million.

In response to a question from Representative Delzer, Ms. Kline said private entities that contributed to the housing incentive fund are eligible to receive a state income tax credit in an amount equal to the contribution. She said the private entity may carry the credit forward for up to 10 years if the income tax liability of the private entity does not exceed the credit amount.

In response to a question from Representative Delzer, the Legislative Budget Analyst and Auditor said the Housing Finance Agency has a continuing appropriation from the housing incentive fund to provide assistance to eligible entities.

In response to a question from Representative Delzer, Ms. Kline said 90 percent of housing incentive fund assistance awarded during the 2011-13 biennium was allocated to areas affected by energy development. She said cities in the eastern part of the state have also recently been experiencing housing shortages, including housing for senior citizens and low-income families.

In response to a question from Senator Cook, Ms. Kline said federal housing vouchers may be used by low-income residents living in a unit that is part of a project that received assistance from the housing incentive fund.

Chairman Delzer asked the Legislative Council staff to provide information to the committee regarding the effect of housing incentive fund tax credits on the general fund revenue forecast.

In response to a question from Representative Headland, Ms. Kline said there was not enough funding available to provide assistance for all applications received. She said some of the projects that did not receive assistance were not completed.

In response to a question from Senator Cook, Ms. Kline said she would provide information to the committee on the number of housing units developed with assistance from the fund for individuals and families by various income levels.

STUDY OF STATE EMPLOYEE COMPENSATION AND BENEFIT ISSUES

Process of Appropriating Funds for State Employee Salaries and Wages

The Legislative Budget Analyst and Auditor presented a memorandum entitled [Salaries and Wages Appropriations - Other States](#). The process of appropriating funds to state agencies to defray the cost of state agency full-time equivalent (FTE) personnel varies by state. Some states, such as Minnesota, use a lump sum appropriations process to provide funds by agency or program rather than by object code line item. As part of the

lump sum appropriations process, the Minnesota Legislature does not specify a specific number of FTE positions authorized for each agency.

The Legislative Budget Analyst and Auditor said some states use a funding pool to distribute state employee salary and benefit increases. The Wisconsin State Legislature appropriates state employee base funding to each agency. However, funding for executive branch state employee compensation and benefit increases are appropriated to the Wisconsin Department of Administration as a funding pool which may be transferred to other executive branch state agencies. Agencies must submit a request for a transfer of funds from the pool which is based upon justification for the funding and the transfer must be approved by the Department of Administration.

Chairman Delzer asked the Legislative Council staff to provide information to the committee regarding FTE positions of the North Dakota University System since 2000.

In response to a question from Senator Cook, the Legislative Budget Analyst and Auditor said the process of appropriating salaries and wages in some states may be affected by collective bargaining processes, specifically relating to salary increases.

Chairman Delzer said the committee may review options at a future meeting to monitor the use of temporary positions by state agencies.

State Employee Retirement Plans in Other States

The Legislative Budget Analyst and Auditor presented a memorandum entitled [*Summary of Retirement Plans in Other Selected States*](#). Several states have recently enacted changes to state employee retirement plans. The Montana Legislature has enacted recent changes to its state employee retirement plan benefit levels and now allocates a portion of natural resources tax collections to the state employee retirement fund.

The Legislative Budget Analyst and Auditor said some states have recently transitioned from a defined benefit retirement plan for state employees to a defined contribution, cash balance, or hybrid retirement plan. New state employees in Tennessee will participate in a retirement plan that has both a defined benefit component and a defined contribution component. New state employees in Kansas will participate in a cash balance retirement plan which is similar to a defined contribution plan but provides for certain guaranteed investment returns.

The Legislative Budget Analyst and Auditor said the Wisconsin Retirement System uses a shared risk design that increases or decreases payments to system retirees. When an employee retires, the employee is guaranteed a minimum annuity payment based on the employee's retirement account. Retirees are not granted cost-of-living adjustments to retirement benefits, but benefit payments may be adjusted if the retirement fund balance is more or less than the actuarially calculated fund reserve requirement.

Chairman Delzer asked the Legislative Council staff to provide more information regarding the state employee retirement plan in Rhode Island, including the status of any lawsuits that were filed as a result of benefit changes to the plan.

Senator Sorvaag suggested the committee receive information regarding any cost-of-living adjustments for the defined benefit portion of the Tennessee hybrid state employee retirement plan.

Chairman Delzer said the committee may review the Montana, Kentucky, Tennessee, and Wisconsin retirement plans in more detail at a future meeting.

Senator Schaible suggested the committee receive information regarding the unfunded liabilities and projected unfunded liabilities of any state retirement plan the committee reviews as well as how the unfunded liabilities will be affected by any changes made to the plans.

Representative Vigasaa suggested the committee receive information regarding updated actuarial valuation reports for the state employee retirement plan in North Dakota.

Representative Bellew suggested the committee receive information regarding whether state employees in other states participate in Social Security.

Representative Holman suggested the committee receive information regarding the Georgia state employee retirement program.

Total Estimated Funding Appropriated for State Employee Salaries and Benefits

The Legislative Budget Analyst and Auditor presented a memorandum entitled [Funding for State Employee Salaries and Benefits \(Excluding Higher Education\)](#). Total appropriations for state employee salaries and benefits, excluding higher education, are estimated to be \$1,559,027,186 for the 2013-15 biennium. This amount represents an increase of 13.3 percent from the 2011-13 biennium estimated appropriations of \$1,375,696,654 for state employee salaries and benefits.

Representative Meier suggested the committee receive information regarding changes in the number of permanent state employees each biennium.

In response to a question from Representative Bellew, the Legislative Budget Analyst and Auditor said the "other salaries" category includes salaries paid to selected types of positions, such as appointed board members that are not state employees. He said it may also include funding pools appropriated to state agencies.

Calculation of Health Insurance Premiums

Mr. Sparb Collins, Executive Director, Public Employees Retirement System, presented information ([Appendix E](#)) regarding the process used to determine state employee health insurance premiums. He said during the spring and summer of even-numbered years the Public Employees Retirement System (PERS) begins the process to obtain bids for state employee health insurance policies for the following biennium. He said bids are normally returned in August, reviewed by PERS, and then submitted to OMB for inclusion in the executive budget.

Mr. Collins said bids received for health insurance premiums generally include several options that may affect the amount of the premium. He said the options include changes in deductible amounts, coinsurance amounts, copayment amounts, and prescription drug benefits. He said the health insurance plan may also have reserves that can be used to buy down the cost of premiums.

In response to a question from Representative Delzer, Mr. Collins said \$2 million of funding was appropriated for the 2013-15 biennium for temporary employee health insurance premiums as required under the federal Affordable Care Act. He said the effective date to begin providing health insurance to temporary employees was recently changed by the federal government from January 1, 2014, to January 1, 2015.

In response to a question from Representative Delzer, Mr. Collins said the current health insurance plan contains some components of a self-insured plan. He said if expenses are greater or lesser than premiums, any gain or loss is divided between the plan and the health insurance carrier. He said the plan receives 50 percent of the first \$3 million of any gain, and the insurance carrier receives the other 50 percent of the gain. He said the plan keeps the entire amount of any gain of over \$3 million. He said the plan shares any loss equally with the carrier for the first \$6 million of loss, and any additional loss above that is the responsibility of the carrier. He said the plan currently has sufficient reserves to provide for any losses allocated to the plan.

In response to a question from Representative Williams, Mr. Collins said the state received two bids from health insurance carriers to provide health insurance for the 2013-15 biennium. He said in previous years, only one bid has been received to provide health insurance. He said there are additional health insurance carriers serving the state which has increased interest in the bidding process.

In response to a question from Representative Delzer, Mr. Collins said he will provide the committee with information regarding how changing premium amounts paid by employees would affect the grandfathered status of the health insurance plan under the federal Affordable Care Act.

Chairman Delzer asked the Legislative Council staff to provide information at a future meeting regarding how selected political subdivisions participating in the state health insurance plan allocate the cost of health insurance premiums between employees and the employer.

In response to a question from Representative Delzer, Mr. Collins said any health insurance plan reserves may be used to offset plan losses or to buy down the cost of health insurance premiums. He said the plan is expected to have approximately \$30 million of reserves for the 2013-15 biennium, excluding any changes that may be made due to gains or losses.

The committee recessed for lunch at 11:35 a.m. and reconvened at 1:00 p.m.

STUDY OF THE LASTING BENEFITS OF THE LEGACY FUND

Mr. Darren Schulz, Interim Chief Investment Officer, Retirement and Investment Office, presented information ([Appendix F](#)) regarding the investments of the legacy fund. He said the State Investment Board approved a plan to

transition into a new investment allocation for the legacy fund. He said the legacy fund was previously invested entirely in short-term fixed income assets. He said the new investment allocation will include fixed income, real estate, and equity investments.

In response to a question from Representative Delzer, Mr. Schulz said the State Investment Board approved the investment allocation plan recommended for the legacy fund by the Legacy and Budget Stabilization Fund Advisory Board.

In response to a question from Senator Lee, Mr. Schulz said the current weighted average management fee for the legacy fund is one-tenth of 1 percent. He said he will provide additional information to the committee regarding the anticipated future management fees of the investments.

In response to a question from Senator Lee, Mr. Schulz said the same investment managers will be used for the legacy fund as other state funds. He said fees are generally based on the amount of money invested in total with a manager.

In response to a question from Representative Delzer, Mr. Schulz said the State Investment Board has approximately 50 manager relationships for investments. He said the board continually reviews the use of managers for investments.

Mr. John Bjornson, Assistant Code Revisor, Legislative Council, presented a memorandum entitled [Legacy Fund Appropriations](#). He said based on a review of Article X, Section 26, of the Constitution of North Dakota, it appears the Legislative Assembly may make appropriations from the legacy fund prior to June 30, 2017, but the funds may not be disbursed or expended until after that date. He said earnings from the legacy fund are required to be transferred to the general fund at the end of each biennium, but the Legislative Assembly may appropriate the funds directly from the legacy fund before any transfer is made to the general fund. He said the only limitation on appropriating and expending money from the legacy fund is the principal and earnings of the fund cannot be expended until after June 30, 2017, a two-thirds vote of the members elected to each house of the Legislative Assembly is required for an expenditure of principal of the fund, and not more than 15 percent of the principal of the fund may be expended during a biennium.

In response to a question from Representative Delzer, Mr. Bjornson said the Legislative Assembly during the 2013 regular legislative session enacted in statute a definition of earnings in respect to the legacy fund. He said the definition provides that unrealized gains or losses are not to be included in the determination of fund earnings. However, he said, there may need to be further refinement on what is considered fund principal and what is considered fund earnings. He said the fund earnings accruing after June 30, 2017, are to be transferred to the general fund at the end of each biennium. He said the first transfer from the legacy fund to the general fund will not occur until the end of the 2017-19 biennium.

In response to a question from Representative Delzer, Mr. Bjornson said it is a policy decision whether the Legislative Assembly should appropriate the earnings of the legacy fund directly from the legacy fund prior to the earnings being transferred to the general fund.

Senator Cook said the committee may need to review the options of the Legislative Assembly in relation to the legacy fund during the 2017 legislative session and in subsequent legislative sessions. He said there may be a question regarding what amount comprises 15 percent of the principal of the fund as it relates to limitation on appropriations. He said it may be appropriate for the committee to recommend legislation to address these issues.

In response to a question from Representative Delzer, Mr. Bjornson said the Legislative Assembly generally has the authority to clarify constitutional provisions through the enactment of laws.

Representative Delzer said the committee may need to consider a bill draft to address issues that could be encountered by the Legislative Assembly during the 2017 and subsequent legislative sessions. He said the committee may also need to address the goal of the legacy fund overall as a recommendation to future Legislative Assemblies.

The Legislative Budget Analyst and Auditor said even though a transfer may be made at the end of the biennium from the legacy fund to the general fund, it will still appear as an available general fund revenue source for the entire biennium.

Senator Cook said the definition of fund principal needs to be addressed, including situations when the fund experiences an investment loss.

Chairman Delzer asked the Legislative Council staff to prepare a bill draft to clarify constitutional provisions relating to the legacy fund, including a definition of the principal of the legacy fund for purposes of determining maximum appropriations for a biennium.

Senator Cook said the priority of the legacy fund should be to benefit future generations.

Chairman Delzer asked the Legislative Council staff to provide an updated memorandum to the committee regarding the use of similar funds in Alaska and Wyoming.

STUDY OF THE FOUNDATION AID STABILIZATION FUND

The Legislative Council staff reviewed a memorandum entitled [Study of the Foundation Aid Stabilization Fund - Background Memorandum](#). Ten percent of oil extraction tax collections are deposited in the foundation aid stabilization fund. During the 2013-15 biennium, a total of \$282 million of oil extraction tax collections are estimated to be deposited in the fund which is estimated to provide a fund balance of \$615 million on June 30, 2015.

Representative Delzer said the Governor currently has the authority to determine whether to use the foundation aid stabilization fund or budget stabilization fund to offset allotments of state school aid in excess of 2.5 percent. He said it may be appropriate for the Legislative Assembly to give direction on the use of the funds to address allotments of state school aid if needed. He said if the budget stabilization fund were to be used for a portion of state school aid allotments, it may be appropriate to have a maximum balance for the foundation aid stabilization fund.

In response to a question from Senator Wardner, Ms. Sharp said the foundation aid stabilization fund is currently invested by the State Treasurer at the Bank of North Dakota.

In response to a question from Representative Delzer, the Legislative Budget Analyst and Auditor said the Director of the Budget has the authority to issue an allotment of funds from the general fund if revenues are less than estimated. He said the Governor may order a transfer from the budget stabilization fund to the general fund to offset any general fund allotments over 2.5 percent.

Senator Wardner said he supports having a fund dedicated to elementary and secondary education to ensure adequate funding in the event of a revenue shortfall.

OTHER BUSINESS

Chairman Delzer announced the committee is tentatively scheduled to meet Thursday, December 12, 2013.

No further business appearing, Chairman Delzer adjourned the meeting at 2:05 p.m.

Brady A. Larson
Assistant Legislative Budget Analyst and Auditor

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:6