

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**GOVERNMENT FINANCE COMMITTEE**

Wednesday, February 12, 2014  
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, Bette Grande, Craig Headland, Rick Holman, Lisa Meier, Kylie Oversen, Don Vigesaa; Senators Dwight Cook, Gary A. Lee, Donald Schaible, Ronald Sorvaag, Terry M. Wanzek, Rich Wardner

**Member absent:** Representative Clark Williams

**Others present:** See [Appendix A](#)

**It was moved by Senator Lee, seconded by Senator Wardner, and carried on a voice vote that the minutes of the December 12, 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 the current balances of major state funds. She presented the following information on the status of the general fund for the 2013-15 biennium as of January 31, 2014:

|                                                                           |                   |                            |
|---------------------------------------------------------------------------|-------------------|----------------------------|
| 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 January 2014                             | \$1,848,890,323   |                            |
| Forecasted general fund revenue for the remainder of the 2013-15 biennium | 3,779,204,044     |                            |
| Total revenues                                                            |                   | 5,628,094,367              |
| Total available                                                           |                   | \$7,279,531,214            |
| 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                     |                   | \$491,252,439 <sup>1</sup> |

<sup>1</sup>Pursuant 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 Chairman Delzer, Ms. Sharp said the estimated balance of the general fund on Tuesday, June 30, 2015, is forecast to be more than the original legislative estimate due to higher than anticipated revenues during the final months of the 2011-13 biennium, higher than estimated revenues during the 2013-15 biennium to date, and higher than estimated general fund turnback at the end of the 2011-13 biennium.

In response to a question from Chairman Delzer, Ms. Kathryn Strombeck, Research Analyst, Tax Department, said individual income tax withholding and estimated payments have been greater than estimated. She said some employers and taxpayers may not have adjusted their income tax withholding rates in response to income tax rate reductions approved by the 2013 Legislative Assembly.

Ms. Strombeck said oil and gas royalty payments became subject to individual income tax withholding on January 1, 2014. She said the first withholding collections on the royalty payments will be received by the Tax Department in April 2014.

In response to a question from Senator Wanzek, Ms. Sharp said farm income levels have been decreasing, which may affect future tax collections. However, she said, she anticipates tax collections will meet projections.

In response to a question from Chairman Delzer, Ms. Sharp said she will provide information to the committee regarding the monthly variances in general fund revenue collections for the 2013-15 biennium to date.

### **Balances of Major State Funds**

Ms. Sharp presented the following information regarding the balances of major state funds as of January 31, 2014:

|                                            |                 |
|--------------------------------------------|-----------------|
| Budget stabilization fund                  | \$583,545,799   |
| Legacy fund                                | \$1,770,099,322 |
| Foundation aid stabilization fund          | \$409,845,609   |
| Property tax relief fund                   | \$567,619,836   |
| Strategic investment and improvements fund | \$1,002,845,216 |

In response to a question from Representative Meier, Chairman Delzer asked the Legislative Council staff to provide information at a future meeting regarding the status of the resources trust fund, including estimated and actual deposits in the fund.

Chairman Delzer asked the Legislative Council staff to provide information at a future meeting regarding the status of the common schools trust fund, including the sources and amounts of revenue deposited in the fund.

### **Department of Human Services Budget Information**

Ms. Debra McDermott, Chief Financial Officer, Department of Human Services, presented an update ([Appendix C](#)) on the status of the department's budget. She said the department anticipates receiving all budgeted federal funding during the 2013-15 biennium and does not anticipate any major federal fund variances for the 2015-17 biennium.

Ms. McDermott reviewed the department's quarterly budget insight report, which provides information regarding the status of department programs. She also reviewed the status of major one-time appropriations for the department during the 2013-15 biennium.

In response to a question from Chairman Delzer, Ms. McDermott said state statute requires counties to pay 25 percent of the nonfederal share of foster care program costs.

In response to a question from Representative Vigesaa, Ms. McDermott said approximately 75 percent of required child support payments are collected by the department.

Chairman Delzer said a future meeting may include a review of the effectiveness of child support programs, including requirements for certain businesses to participate in the child support lien registry.

In response to a question from Chairman Delzer, Ms. Maggie D. Anderson, Executive Director, Department of Human Services, said the department conducts stakeholder meetings to gather input from the public regarding department programs. She said the meetings may include suggestions from the public for ways to improve program efficiencies. She said the department reviews program effectiveness on a continual basis through regular program administration and planning.

Ms. McDermott provided an update on the Medicaid Expansion project. She said approximately 3,109 individuals have enrolled for coverage under the Expansion. She said preliminary data indicates most enrollees are adults with children and most enrollees live in rural areas.

In response to a question from Chairman Delzer, Ms. Anderson said the federal Centers for Medicare and Medicaid Services defines urban and rural areas in the state. She said the only urban areas in the state are in Burleigh and Cass Counties.

In response to a question from Senator Wanzek, Ms. Anderson said the department estimated that 20,500 individuals would become eligible under the Medicaid Expansion project. She said the department expects the number of enrollees to continue to increase. She said the department is providing information to the public

regarding the expanded Medicaid program through the department's website, public service announcements, and partnerships with other agencies, such as the Indian Affairs Commission.

In response to a question from Representative Holman, Ms. McDermott said the number of people eligible for Medicaid in the state has remained fairly stable during the past year.

Chairman Delzer said on a per capita basis, the number of eligible recipients for Medicaid has decreased. He said the number of people eligible for Medicaid has remained stable while the total population of the state has increased.

In response to a question from Chairman Delzer, Ms. Anderson said the department is in the process of determining a completion date for the Medicaid management information system project. She said the department is working to complete the project prior to Wednesday, October 1, 2014.

In response to a question from Representative Headland, Ms. Anderson said there are different requirements for providing services to recipients under the Medicaid Expansion program compared to the traditional Medicaid program. She said coverage for recipients enrolled through the Expansion program must be provided through a private carrier. She said the department has contracted with Sanford Health to provide coverage under the Expansion program, while the traditional Medicaid recipients are provided services through the existing Department of Human Services Medicaid program.

In response to a question from Representative Boschee, Ms. Anderson said there are different ways for a person to enroll in the Medicaid program. She said the department receives online applications, paper applications, or information from the federal health insurance marketplace. She said the department does not track the number of applications that are received as a result of an individual obtaining emergency room or clinic services.

In response to a question from Senator Lee, Ms. Anderson said the department's contract with Sanford Health for recipients under the expanded Medicaid program is considered a managed care contract and federal rules apply. She said the department must use an actuary to determine the coverage rate ranges under the contract. She said there are currently risk-sharing provisions in the contract that will eventually be removed once the program is established.

### **STUDY OF THE PURCHASE OF THE RESEARCH ENTERPRISE AND COMMERCIALIZATION BUILDING AT THE UNIVERSITY OF NORTH DAKOTA**

The Legislative Council staff presented a memorandum entitled [Study of the Research Enterprise and Commercialization Building on the Campus of the University of North Dakota - Background Memorandum](#). The Legislative Council staff said by directive of the Chairman of the Legislative Management, the Government Finance Committee has been assigned a study of the actions of the State Board of Higher Education relating to the purchase of the Research Enterprise and Commercialization (REAC) building on the campus of the University of North Dakota (UND).

The Legislative Council staff said in November 2006, UND leased state-owned land to the UND Research Foundation upon which the REAC building was to be constructed. The UND Research Foundation, which is a private nonprofit entity, obtained financing for the construction of the building. The Legislative Assembly through Section 23 of 2013 Senate Bill No. 2003 authorized the State Board of Higher Education to enter agreements to purchase the REAC building from the UND Research Foundation and to enter agreements to finance the purchase.

The Legislative Council staff presented the following proposed study plan for the committee's consideration:

1. Receive and review information regarding the history of the REAC building; financing and funds used to construct the building; an overview of the facility, including space leased to other entities; and limitations on the use of the facility.
2. Receive and review information regarding the legal obligations of the state to repay any of the original loans used to construct the building.
3. Receive and review information regarding the original ground lease entered by UND and the UND Research Foundation and what would happen if the ground lease was terminated.
4. Receive and review information regarding the status of the purchase of the building, including the manner in which purchase negotiations have or will be handled and how the negotiations complied with legislative intent regarding the purchase of the building.
5. Receive testimony from interested persons regarding the study.

6. If determined to be necessary, recommend to the Chairman of the Legislative Management that a performance audit be conducted on actions relating to the REAC building.
7. Develop other committee recommendations and any bill drafts necessary to implement the recommendations.
8. Prepare a final report for submission to the Legislative Management.

In response to a question from Chairman Delzer, the Legislative Council staff said the committee may recommend to the Chairman of the Legislative Management that a performance audit be conducted on actions relating to the purchase of the REAC building. The Chairman of the Legislative Management would then need to request the Legislative Audit and Fiscal Review Committee to review the issue and determine whether to request a performance audit.

Later in the meeting, Senator Cook suggested the Legislative Council staff provide information to the committee regarding the ability to use an outside consultant as part of a performance audit, the time that may be required to conduct a performance audit, and potential costs of a performance audit, including the entity responsible for paying the costs.

**It was moved by Senator Wanzek, seconded by Representative Grande, and carried on a voice vote to approve the study plan for the study of actions relating to the purchase of the Research Enterprise and Commercialization building, as presented.**

Dr. Kirsten Diederich, President, State Board of Higher Education, Fargo, provided comments ([Appendix D](#)) regarding the REAC building purchase. She said the previous president of UND undertook a project to increase research and commercialization facilities on the campus. She said a nonprofit research foundation was formed to generate financial support and partners for the construction of a building on campus. She said the research foundation obtained financing for the building which was eventually constructed. However, she said, soon after construction was complete, an economic downturn reduced the market demand for the type of facilities included in the building and the foundation experienced financial difficulties.

Dr. Diederich said UND determined the best option for the institution would be to assume ownership of the building and refinance an existing loan on the building. She said UND sought and received approval from the State Board of Higher Education to purchase the building. She said UND purchased the building in September 2013.

In response to a question from Chairman Delzer, Dr. Diederich said the State Board of Higher Education did not take any official action regarding the REAC building after Section 23 of Senate Bill No. 2003 became effective in May 2013.

Chairman Delzer expressed concern that UND negotiated the agreement to purchase the REAC building from the UND Research Foundation. He said the section of law authorizing the purchase of the building specified the State Board of Higher Education was to enter agreements to purchase the building. He said there is also concern there were no official board actions that occurred after the effective date of the section of law authorizing the purchase.

Chairman Delzer said it may not be appropriate for UND to use taxpayer funds to bail out a private entity that took too much risk in constructing a building. He said at a future meeting, the committee may receive information regarding the process and rationale used to determine the square footage needed for the building.

Senator Wardner expressed concern the State Board of Higher Education did not negotiate the agreement to purchase the building. He also expressed concern it appears the financial institution that provided the original loan is receiving taxpayer dollars for a bailout of a bad loan that it made.

In response to a question from Chairman Delzer, Dr. Diederich said the State Board of Higher Education assumed UND had the authority to conduct the negotiations to purchase the building. She said the board regularly delegates duties to North Dakota University System institutions.

Chairman Delzer said the committee needs to be made aware of any other situations that may exist where a private institution foundation may default on a loan and the taxpayers will be asked to assume the debt.

Senator Cook said the original proposal presented to the Legislative Assembly was for UND to conduct negotiations to purchase the REAC building. He said the Legislative Assembly rejected that proposal and instead provided for the State Board of Higher Education to conduct negotiations to purchase the building.

Senator Cook asked Dr. Diederich if she or any other State Board of Higher Education members were aware of the provision requiring the board to conduct the negotiations. He also asked Dr. Diederich if she has any proposals to rectify the situation. Dr. Diederich responded that in October 2013 she was first made aware of the requirement that the State Board of Higher Education conduct negotiations to purchase the building. She said she was informed of this requirement by another member of the board. However, she said, UND had already purchased the building.

Dr. Robert Kelley, President, University of North Dakota, Grand Forks, presented information ([Appendix E](#)) regarding the REAC building. He said the financial institution that provided the loan to the UND Research Foundation for the construction of the REAC building would have obtained ownership of the building if the loan went into default. He said the original ground lease between UND and the UND Research Foundation was terminated when UND purchased the REAC building on September 16, 2013.

Dr. Kelley said the cost to construct the REAC building was \$17,114,539 and research equipment and furniture for the building cost an additional \$1,780,656. He presented the following schedule detailing the sources of the funding for the project:

| <b>REAC Building - Sources of Funds for Construction and Equipment</b> |                     |
|------------------------------------------------------------------------|---------------------|
| Federal Economic Development Administration grant                      | \$1,499,621         |
| Centers of excellence project funding                                  | 3,557,547           |
| Department of Commerce (centers of excellence funding)                 | 1,493,664           |
| City of Grand Forks                                                    | 500,000             |
| Department of Energy and centers of excellence                         | 1,079,451           |
| Loans                                                                  | 10,000,000          |
| <b>Total</b>                                                           | <b>\$18,130,283</b> |

Dr. Kelley presented the following information regarding liabilities incurred by the UND Research Foundation to construct the building:

| <b>UND Research Foundation - Liabilities Incurred to Construct the REAC Building</b> |                     |
|--------------------------------------------------------------------------------------|---------------------|
| Bremer Bank - Construction loan                                                      | \$6,250,000         |
| Bremer Bank - Working capital loan                                                   | 250,000             |
| North Dakota Development Fund                                                        | 1,000,000           |
| Tax-exempt bond issued through Grand Forks County                                    | 2,500,000           |
| Capital leases for furniture                                                         | 494,141             |
| <b>Total</b>                                                                         | <b>\$10,494,141</b> |

Dr. Kelley said as of December 31, 2012, the UND Research Foundation had total liabilities of \$9,612,945. He said the foundation currently has no liabilities due to UND assuming the liabilities associated with the building.

Dr. Kelley said UND sought outside legal counsel regarding obligations of the institution to repay any loans obtained by the UND Research Foundation. He said the outside counsel indicated there was no express contractual acceptance of liability by the institution. However, he said, the institution was advised reasonable arguments could be made that UND did have some financial obligations.

Dr. Kelley said the REAC building contains 31,982 rentable square feet, of which 14,263 square feet are currently leased to private entities and 3,436 square feet are occupied by the UND School of Medicine and Health Sciences. He said a requirement of the federal Economic Development Administration grant funds is that the facility be used for economic development purposes, including the growth and development of technology-based companies focusing on life sciences and advanced engineering.

Dr. Kelley said UND has provided the following lease and support payments to the UND Research Foundation since 2009:

|                                                  |                    |
|--------------------------------------------------|--------------------|
| Lease agreement payment made in fiscal year 2011 | \$335,000          |
| Lease agreement payment made in fiscal year 2012 | 1,441,374          |
| Support payment made in fiscal year 2013         | 250,000            |
| <b>Total</b>                                     | <b>\$2,026,374</b> |

Chairman Delzer asked the Legislative Council staff to provide information at a future meeting regarding the ability of a lending financial institution to take possession of a building on state-owned land when a loan on the building goes into default.

In response to a question from Chairman Delzer, Dr. Kelley said he will provide the committee with information regarding how much Department of Energy funding and how much centers of excellence funding was used for building furniture and equipment.

In response to a question from Senator Wanzek, Ms. Alice Brekke, Vice President for Finance and Operations, University of North Dakota, Grand Forks, said UND and the UND Research Foundation entered an agreement for UND to guarantee a minimum amount of space to be leased in the REAC building. She said the agreement between the UND Research Foundation and the financial lender for the REAC building provided the building was to be collateral for the construction loan but not the land the building is located on.

In response to a question from Representative Holman, Ms. Brekke said it was the responsibility of the UND Research Foundation to remain current on loans used to construct the building. She said the foundation remained current on its loan payments, and the foundation does not currently have any liabilities.

In response to a question from Chairman Delzer, Ms. Brekke said there were three separate agreements between UND and the UND Research Foundation regarding the amount of space UND was to lease in the REAC building and support payments to be provided to the foundation. She said an original agreement regarding the minimum amount of space UND would lease was later renegotiated into a new agreement. She said there was also an agreement for UND to provide support payments to the UND Research Foundation.

In response to a question from Representative Meier, Ms. Brekke said the appraisal of the REAC building did not include the value of the land on which the building is located.

In response to a question from Chairman Delzer, Dr. Kelley said UND began discussions with representatives of Bremer Bank in January 2012 regarding options to reduce the amount of the loan on the building. However, he said, representatives of the bank would not reduce the outstanding loan amount.

In response to a question from Chairman Delzer, Dr. Kelley said he will provide the committee with information regarding any changes in the size or cost of the building that were made during the planning and construction of the REAC building.

In response to a question from Chairman Delzer, Dr. Kelley said three private businesses currently lease space in the REAC building.

Chairman Delzer said the committee will receive information at a future meeting regarding the amount of square footage leased in the building each year since the building was constructed and which entities leased the space.

In response to a question from Representative Holman, Dr. Kelley said minor changes may be made to the use of the building. However, he said, there are long-term federal requirements regarding the types of uses for which the building may be used.

In response to a question from Chairman Delzer regarding options to remove the federal grant restrictions on the REAC building, Ms. Brekke said the institution could repay the \$1.5 million federal grant that was used to construct the building.

In response to a question from Chairman Delzer, Dr. Kelley said UND determined it should purchase the REAC building due to the financial condition of the UND Research Foundation. He said it was not feasible to continue the foundation, and the foundation has been dissolved.

In response to a question from Chairman Delzer regarding the membership of the UND Research Foundation Board of Directors, Dr. Kelley said it was difficult to get private industry members to serve on the board of directors. He said having UND representatives serve on the board provided the institution with some assurance of the accountability of the foundation.

In response to a question from Chairman Delzer, Dr. Kelley said UND was not aware that the State Board of Higher Education was required to negotiate the purchase of the REAC building rather than the institution. He said he, as president, also has full authority over the institution pursuant to board policy.

Chairman Delzer said there were no State Board of Higher Education actions delegating the authority to purchase the REAC building to UND after the enactment of the law authorizing the purchase of the building.

Chairman Delzer expressed concern regarding the results of the appraisal of the building. He said the value of some items appears to be inflated.

Mr. Murray G. Sagsveen, Chief of Staff, North Dakota University System, presented information ([Appendix F](#)) regarding the REAC building. He said he compiled a summary of the legislative actions relating to the building in order to determine legislative intent. He said the records of legislative hearings indicate legislators knew the building would be purchased by UND and no general fund appropriations would be required for the purchase. He said based on his review of legislative records, it appears the State Board of Higher Education, acting through UND, fully complied with the express legislative intent concerning the purchase of the REAC building.

In response to a question from Chairman Delzer, Mr. Sagsveen said he did not contact any legislators while researching the legislative intent regarding the REAC building.

Senator Wardner said legislators required in the section of the bill that the State Board of Higher Education negotiate the purchase to avoid a conflict of interest by having UND participate in negotiations to purchase the REAC building from the UND Research Foundation. He said the financial institution which provided the loan to the foundation for the construction of the building should have had some responsibility for making a bad loan. He expressed concern that taxpayers and students are repaying a bad loan made by a financial institution to a private entity. He also questioned the appropriateness of the interest rate on the loan obtained by UND to purchase the building. He suggested the State Board of Higher Education consider voiding the purchase agreement and related loan.

Mr. Sagsveen said there are more than 20 foundations that exist for the support of University System institutions. He said there are State Board of Higher Education policies regarding the relationship between institutions and foundations. He said each institution must have an operating agreement in place between the institution and foundation. He said the operating agreements are currently being reviewed to ensure the agreements are in full compliance with board policy.

Senator Cook suggested the committee receive information regarding whether Bremer Bank could have taken ownership of the REAC building if the UND Research Foundation defaulted on loan payments to the bank. He also suggested the committee receive information regarding whether the federal restrictions would still be in place and what options UND would have to renegotiate the ground lease if the bank had taken ownership of the building.

Chairman Delzer said the committee will receive information at a future committee meeting regarding expectations of entities to repay centers of excellence grant funding when a project fails.

## STUDY OF STATE EMPLOYEE COMPENSATION AND BENEFIT ISSUES

### State Employee Retirement Plan

The Legislative Council staff presented a memorandum entitled [Retirement Plan Component Comparisons](#). The memorandum provided the major components of defined benefit retirement plans, defined contribution retirement plans, hybrid retirement plans, and cash balance retirement plans. The features of each plan type were summarized as:

| Features                                 | Defined Benefit Retirement Plan                            | Defined Contribution Retirement Plan                                                         | Cash Balance Retirement Plan                                                                     | Hybrid Retirement Plan                |
|------------------------------------------|------------------------------------------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------------------------------|
| Employer obligation to make payments end | Lifetime of the employee, and perhaps a survivor           | Employee's tenure on the job                                                                 | Employee's tenure on the job                                                                     | Depends on how the plan is structured |
| Cost-of-living adjustment                | Most plans offer, depending on an actuarial estimation     | No                                                                                           | Most plans offer, depending on fund's overall annual rate of return                              | Depends on how the plan is structured |
| What employee receives upon retirement   | Promise of a fixed monthly payment                         | A lump sum that may be converted to an annuity or drawn down, as with an IRA                 | Promise of a fixed monthly payment                                                               | Depends on how the plan is structured |
| Investment control                       | Employer                                                   | Employee acting within limits established by the employer                                    | Employer                                                                                         | Depends on how the plan is structured |
| Benefit calculation                      | Years of service, benefit multiplier, final average salary | Percentage of salary deposited over time, with earnings and possibly employer matching funds | Percentage of salary credited to a commingled account, plus an interest rate set by the employer | Depends on how the plan is structured |
| Does plan reward longevity or mobility   | Longevity (generally)                                      | Mobility (generally)                                                                         | Either                                                                                           | Depends on how the plan is structured |

| Features                                                  | Defined Benefit Retirement Plan | Defined Contribution Retirement Plan | Cash Balance Retirement Plan | Hybrid Retirement Plan                |
|-----------------------------------------------------------|---------------------------------|--------------------------------------|------------------------------|---------------------------------------|
| Can employee supplement money contributed by the employer | No (generally)                  | Yes                                  | No (generally)               | Depends on how the plan is structured |
| At risk or reward for investment gains or losses          | Employer                        | Employee                             | Employer, but limited        | Depends on how the plan is structured |

The Legislative Budget Analyst and Auditor presented a memorandum entitled [History of Retirement Plans for State Employees - 1947 Through 1977](#). Prior to 1950 under federal law, state employees were ineligible to participate in the federal Social Security program. As a result, in 1947 the Legislative Assembly approved House Bill No. 182 creating the North Dakota Old Age and Survivor Insurance System (OASIS) plan, which became effective on July 1, 1947. The OASIS plan was a contributory retirement plan for state, county, and other political subdivision employees.

In 1955, due to changes in federal law relating to Social Security, the Legislative Assembly passed House Bill No. 736, which enabled the state to make an agreement with the federal government to allow state employees to participate in Social Security. On December 20, 1956, Governor C. Norman Brunsdale called a referendum for all covered employees and allowed employees to choose coverage under Social Security rather than the OASIS plan. The adoption of Social Security was intended as a benefit to both the state of North Dakota and its employees. The employees already receiving retirement benefits under the OASIS plan were allowed to continue in the OASIS plan. Additionally, any state employee that would have benefited more under the OASIS plan than Social Security was allowed to elect continuation in the OASIS plan.

By 1957 the state concluded the OASIS plan was not actuarially sound and could not function as a self-supporting plan. In 1957 the Legislative Assembly approved Senate Bill No. 45, which closed the OASIS plan on July 1, 1957. Contributions necessary to fund the remaining participants in the OASIS plan were provided from an employer contribution of 4 percent of the first \$4,800 of annual wages. The employer contribution percentage was changed by the Legislative Assembly during the periods from 1957 to 1966. From 1966 to 1989, provisions were in place that triggered the employer contributions on and off depending on the funding needs of the OASIS fund. In 1989 the Legislative Assembly approved House Bill No. 1118, which discontinued the employer contribution after June 30, 1989. In 1999 the Legislative Assembly approved House Bill No. 1170, which repealed the employer contribution section. Any future funding requirements for the OASIS plan, for which the OASIS fund was not sufficient to pay, would be provided with appropriations through the general fund. The Legislative Assembly provided a \$19,000 general fund appropriation in each of the 2005-07 and 2007-09 bienniums for paying remaining benefits under the OASIS plan.

In the early to mid-1960s, North Dakota was one of only a few states remaining that did not offer a state retirement plan to its employees. In 1965 the Legislative Assembly approved Senate Bill No. 164 creating the employees' retirement program, which became effective on July 1, 1966, structured as a money purchase plan (similar to a defined contribution plan). In 1977 the Legislative Assembly approved Senate Bill No. 2068 creating the benefit formula retirement plan (a defined benefit plan), which became effective on July 1, 1977, and all members of the money purchase plan were covered under the new plan.

The committee recessed for lunch at 11:55 a.m. and reconvened at 1:00 p.m.

Chairman Delzer said the committee may need to request an actuarial review of the cost of closing the defined benefit plan to new employees and creating a defined contribution plan for new state employees. He distributed a document ([Appendix G](#)) detailing specific information that could be requested for the actuarial review.

In response to a question from Chairman Delzer, Mr. Sparb Collins, Executive Director, Public Employees Retirement System, said approximately 50 percent of employees enrolled in the Public Employees Retirement System (PERS) main system are state employees, and the remaining 50 percent are employees of participating political subdivisions. However, he said, state employees represent almost 60 percent of the covered payroll amount of enrollees in the plan.

Senator Sorvaag said as part of the committee's study of retirement plans, it is important to have the actuarial estimates of future costs if the defined benefit plan is closed and a defined contribution plan is created for new state employees.

In response to a question from Senator Lee, Mr. Collins said the actuarial valuation report of the state employee retirement system is completed as of June 30 of each year to coincide with the fiscal year-end financial statements. However, he said, changes to the plan can be made anytime during the year.



In response to a question from Representative Grande, Mr. Collins said the annual actuarial review of state employee retirement plans cannot be completed until the fiscal year-end financial statements of the plans are audited. He said the earliest the report can be available is generally October of each year.

In response to a question from Representative Grande, Mr. Collins said he will provide information to the committee regarding financial reporting changes contained in Governmental Accounting Standards Board (GASB) Statement Nos. 67 and 68.

In response to a question from Chairman Delzer, Mr. Collins said a vested employee participating in the state defined benefit plan may leave funds in the plan when terminating employment with the state. He said if the employee returns to employment with the state, the employee may participate in the defined benefit plan again.

Representative Grande suggested the committee receive actuarial information regarding the estimated costs associated with closing the defined benefit retirement plan and creating a new defined contribution plan for new state employees, effective Friday, January 1, 2016.

Chairman Delzer asked Mr. Collins to provide information to the committee regarding the current plan assumptions for the state employee retirement plan.

In response to a question from Senator Cook, Mr. Collins said PERS has a contract with an actuary to conduct reviews of the state employee retirement plan on an annual basis and as needed during other times of the year. He said approximately every 10 years, PERS contracts with another actuary to review the results calculated by the original actuary. He said there may be minor differences in the results generated by different actuaries, but there generally are not any significant variances.

Senator Schaible said it may be beneficial for the committee to request an actuarial review from a third-party actuary rather than the actuary contracted with PERS.

**It was moved by Representative Grande, seconded by Senator Schaible, and carried on a voice vote to request the Public Employees Retirement System actuary to conduct an actuarial review of the estimated costs associated with closing the defined benefit retirement plan to new employees and providing new employees a defined contribution plan effective Friday, January 1, 2016, and to include additional actuarial information based on the guidelines contained in GASB Statement Nos. 67 and 68.**

Chairman Delzer asked the Legislative Council staff to contact third-party actuaries to determine the estimated costs of having a third-party actuary conduct an actuarial review of the estimated costs associated with closing the defined benefit retirement plan to new employees and providing new employees a defined contribution retirement plan.

### **University System Employees and Students**

The Legislative Council staff reviewed a memorandum entitled [North Dakota University System Employees and Student Enrollment](#). The memorandum compares the growth in University System employees from 2006 to 2013 to the growth in student enrollment during the same time period. Between 2006 and 2013, the number of University System employees, excluding student employees, increased by 10.1 percent while full-time equivalent (FTE) student enrollment increased by 8.3 percent.

In response to a question from Senator Sorvaag, the Legislative Council staff said the FTE student enrollment of an institution is calculated by dividing total undergraduate student credit-hours taken by 15 and dividing total graduate student credit-hours taken by 12.

### **State Employee Health Insurance Plan**

Mr. Collins distributed a letter ([Appendix H](#)) explaining changes that can be made to employee health insurance premium contributions without causing a health insurance plan to lose its grandfathered status under the federal Affordable Care Act. He said the state employee health insurance plan may lose its grandfathered status if the percentage of the health insurance premium paid by state employees increases by more than five percentage points from the percentage contributed by employees on March 23, 2010.

In response to a question from Chairman Delzer, Mr. Collins said there are other changes to a health plan, such as increasing copayments or deductibles, which may also affect a plan's grandfathered status under the federal Affordable Care Act.

In response to a question from Chairman Delzer, Mr. Collins said the state employee health insurance plan claims experience trend has been increasing by approximately 7 percent per year; therefore, based on this trend, premiums could increase by approximately 14 percent for the next biennium.

Mr. Collins presented an overview ([Appendix I](#)) of the high-deductible health plan for state employees. He said the 2011 Legislative Assembly authorized the creation of an optional high-deductible health plan for state employees. He said the plan became effective on January 1, 2012, and has higher deductible and coinsurance amounts compared to the regular health insurance plan.

Mr. Collins said the high-deductible health plan includes a health savings account for employees that allows participants to set aside funds to pay for qualified medical expenses. He said the account is owned by the participant, the state makes contributions to the account, there is no fund balance limit, funds in the account continue into subsequent years if not used, and the account is portable if the employee discontinues employment with the state. He said the state currently contributes \$60.74 per month into the account for employees with a single plan and contributes \$147 per month into the account for employees covered under a family plan.

In response to a question from Senator Wanzek, Mr. Collins said the health savings account is portable, and an employee who retires can continue to use funds in the employee's account.

In response to a question from Representative Meier, Mr. Collins said there are currently 135 contracts under the high-deductible health plan.

In response to a question from Representative Boschee, Mr. Collins said existing state employees can enroll in the high-deductible health plan during the annual open enrollment period for benefits. He said new employees can enroll in the plan when beginning employment with the state.

### **STUDY OF THE LASTING BENEFITS OF THE LEGACY FUND**

The Legislative Budget Analyst and Auditor presented a bill draft [[15.0057.02000](#)] clarifying provisions relating to the legacy fund. The bill draft provides several definitions for constitutional provisions relating to the legacy fund and clarifies the process used to determine limitations on expenditures from the legacy fund. The bill draft also provides earnings transferred from the legacy fund to the general fund at the end of a biennium are to be transferred back to the legacy fund and become principal unless certain criteria are met.

In response to a question from Senator Cook, the Legislative Budget Analyst and Auditor said the bill draft repeals Section 21-10-12 relating to the definition of legacy fund earnings and enacts the same language in Chapter 54-27.

In response to a question from Chairman Delzer, Mr. David Hunter, Chief Investment Officer, Retirement and Investment Office, said his office has no concerns regarding the transfer of the definition of legacy fund earnings from Section 21-10-12 to Chapter 54-27.

Chairman Delzer asked the Legislative Council staff to revise the bill draft to provide the executive budget recommendation may not propose spending the principal or earnings of the legacy fund.

In response to a question from Senator Cook, the Legislative Budget Analyst and Auditor said the Legislative Assembly, during the 2017 regular legislative session, may appropriate funds from the legacy fund to be spent during the 2017-19 biennium.

Senator Cook suggested the committee encourage comments from interested persons and entities regarding the bill draft.

### **STUDY OF THE FOUNDATION AID STABILIZATION FUND**

The Legislative Council staff reviewed a bill draft [[15.0055.02000](#)] clarifying the use of the foundation aid stabilization fund and budget stabilization fund for state school aid payments in the event of a general fund revenue shortfall. The bill draft provides that for the first 2.5 percent general fund revenue shortfall, the foundation aid stabilization fund is to be used to offset the shortfall relating to state school aid payments. For any revenue shortfall in excess of 2.5 percent, the budget stabilization fund is to be used first to offset the shortfall, and the foundation aid stabilization fund is to be used to offset the shortfall once the budget stabilization fund is depleted.

Chairman Delzer said under the provisions of the bill draft, a general fund revenue shortfall of approximately 12 percent would be required to fully deplete the budget stabilization fund. However, he said, the Governor would likely call a special session of the Legislative Assembly to determine appropriate actions to take if a revenue shortfall reached this level.

**OTHER BUSINESS**

Chairman Delzer announced the committee is tentatively scheduled to meet on Thursday, March 13, 2014.

No further business appearing, Chairman Delzer adjourned the meeting at 2:30 p.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:9