

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**BUDGET SECTION**

Thursday, September 28, 2017  
Senate Chamber, State Capitol  
Bismarck, North Dakota

Representative Larry Bellew, Chairman, called the meeting to order at 10:30 a.m.

**Members present:** Representatives Larry Bellew, Tracy Boe, Randy Boehning, Roger Brabandt, Mike Brandenburg, Al Carlson, Lois Delmore, Jeff Delzer, Kathy Hogan, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Chet Pollert, Mark Sanford, Mike Schatz, Jim Schmidt, Roscoe Streytle, Don Vigesaa; Senators Dick Dever, John Grabinger, Joan Heckaman, David Hogue, Ray Holmberg, Jerry Klein Gary A. Lee, Tim Mathern, Dave Oehlke, Larry J. Robinson, Ronald Sorvaag, Rich Wardner

**Members absent:** Representatives Richard G. Holman, Tom Kading; Senators Bill L. Bowman, Robert Erbele, Ralph Kilzer, Karen K. Krebsbach, Terry M. Wanzek

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

**It was moved by Senator Robinson, seconded by Senator Mathern, and carried on a voice vote that the minutes of the June 21, 2017, meeting be approved as distributed.**

**ECONOMIC INDICATORS**

Ms. Pam Sharp, Director, Office of Management and Budget, presented information ([Appendix B](#)) on the key economic indicators, including consumer prices, money markets, personal income, commodity prices, unemployment, employment growth, personal income, energy prices and production, and mortgage rates. She said Moody's Analytics reported agricultural prices decreased by an average of 9.3 percent during 2016, the result of a 2.4 percent reduction in crop prices and a 16.6 percent decrease in livestock prices. She said the national employment growth rate from May 2016 to May 2017 was 1.6 percent while the North Dakota employment growth rate increased by 1.1 percent. She said the May 2017 legislative forecast was based on oil production remaining at 925,000 barrels per day during the first year of the 2017-19 biennium, then increasing to 950,000 barrels per day during the second year. She said the current number of oil rigs operating in the state is 56, which is 24 more than the number operating in the state last year. She said the average price per barrel of oil was \$40.98 and the number of barrels produced per day was 1,047,526 during July 2017. She said personal income grew by 1.2 percent during 2016 and that Moody's Analytics predicts personal income growth will average 1.5 percent during 2017, 2.0 percent in 2018, and 2.1 percent in 2019. Moody's Analytics predicts lower annual growth rates of 1.8 percent and 1.7 percent in 2020 and 2021, respectively.

In response to a question by Representative Delzer, Ms. Sharp said she does not anticipate the North Dakota federal medical assistance percentage to fluctuate in the next 2 to 4 years due to changes in personal income.

**STATUS OF THE 2015-17 BIENNIUM GENERAL FUND**

Ms. Sharp presented a report ([Appendix C](#)) on the status of the general fund for the 2015-17 biennium.

Unobligated general fund balance - July 1, 2015		\$729,529,389
Balance obligated for authorized carryover from the 2013-15 biennium		147,653,143
Total beginning general fund balance - July 1, 2015		\$877,182,532
Add		
General fund collections		4,121,719,959
Total revenue available		\$4,998,902,491
Less		
Legislative appropriations	(\$6,026,158,028)	
Contingent appropriation - Department of Transportation	(20,000,000)	
4.05% allotment (executive branch only)	239,120,391	
4.05% allotment (legislative branch and Supreme Court)	5,749,197	
2.5% allotment (all branches)	151,154,064	

Restore funding for Department of Human Services and Department of Corrections and Rehabilitation	(36,535,880)	
Authorized carryover from previous biennium	(147,653,143)	
2015-17 biennium authority used in 2013-15 biennium pursuant to emergency clause	9,858,196	
Supplemental appropriations authorized by 2017 Legislative Assembly	(617,010)	
Total appropriations		(5,825,082,213)
Unspent appropriation authority (turnback)		97,846,781
Estimated ending general fund balance - June 30, 2015 - Before transfers		(\$728,332,941)
Transfer from budget stabilization fund	\$572,485,454	
Transfer from Bank of North Dakota	100,000,000	
Transfer from strategic investment and improvements fund	155,000,000	
Transfer to budget stabilization fund <sup>1</sup>	(32,202,755)	
Net effect of other transfers, adjustments, and cash certifications	(1,949,758)	
Total transfers and adjustments		793,332,941
Estimated ending general fund balance - June 30, 2017		\$65,000,000 <sup>1</sup>
<sup>1</sup> Pursuant to North Dakota Century Code Chapter 54-27.2, any end-of-biennium balance in excess of \$65 million must be transferred to the budget stabilization fund, up to a maximum of 15 percent of general fund appropriations.		

Ms. Sharp said the actual 2015-17 biennium general fund ending balance was \$65.0 million, which was \$34.7 million more than the estimated 2015-17 biennium general fund balance of \$30.3 million.

### 2015-17 BIENNIUM GENERAL FUND TURNBACK

Ms. Sharp presented information ([Appendix D](#)) on 2015-17 biennium unspent general fund appropriations (turnback) by agency. She said 2015-17 unspent general fund appropriation authority totaled \$97.8 million. She said the Office of Management and Budget (OMB) had turnback of \$2.9 million, most of which was related to funding for health insurance for temporary employees required by the federal Affordable Care Act. She said the Tax Commissioner had turnback of \$4.3 million, which primarily related to the homestead tax credit program; the Department of Public Instruction had turnback of \$37.1 million, which was a result of reduced state school aid spending due to lower than anticipated enrollment growth; the North Dakota University System had turnback of \$5.0 million related to student financial assistance grants; the Department of Human Services had turnback of \$27.3 million, which related primarily to Medicaid and salaries and wages savings; the Industrial Commission had turnback of \$3.1 million related to unneeded federal litigation funding; the Department of Corrections and Rehabilitation had turnback of \$3.9 million due to lower than anticipated inmate population; and the Department of Commerce had turnback of \$2.2 million, of which \$1 million was from the unmanned aircraft systems test site while the remaining amount related primarily to prekindergarten community grants.

### 2015-17 BIENNIUM CAPITAL CONSTRUCTION CARRYOVER

Ms. Sharp presented information ([Appendix E](#)) on capital construction carryover. She said funding of \$89.5 million for the 2015-17 biennium was continued into the 2017-19 biennium. She said of the \$89.5 million, approximately \$7.2 million is from the general fund. She said the Capital Construction Carryover Committee authorized the Secretary of State to continue \$2.2 million for a business licensing system; OMB to continue \$2.1 million related to the Governor's residence; the Aeronautics Commission to continue \$2.5 million, of which \$1.8 million is for commercial service airport grants and \$735,653 is for general aviation airport grants; Parks and Recreation Department to continue \$3.7 million for various statewide projects; the State Water Commission (SWC) to continue \$63.2 million, of which \$22.3 million relates to flood control projects and \$30.8 million relates to water supply projects; and the Department of Transportation to continue \$12.5 million relating to various statewide roadway and highway projects.

### STATUS OF THE 2017-19 BIENNIUM GENERAL FUND

Ms. Sharp presented a report ([Appendix F](#)) on the status of the general fund for the 2017-19 biennium.

Unobligated general fund balance - July 1, 2017		\$65,000,000
Balance obligated for authorized carryover from the 2015-17 biennium		99,271,093
Total beginning general fund balance - July 1, 2017		\$164,271,093
Add		
General fund collections through August 2017	\$625,685,919	
Forecast general fund revenue for the remainder of the 2017-19 biennium	3,713,119,051	
Total revenues		4,338,804,970
Total available		\$4,503,076,063
Less		
Legislative appropriations - One-time	(\$14,638,226)	
Legislative appropriations - Ongoing	(4,295,624,415)	
Authorized carryover from the 2015-17 biennium	(99,271,093)	
Total appropriations		(4,409,533,734)
Estimated ending general fund balance - June 30, 2017		\$93,542,329 <sup>1</sup>

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

Ms. Sharp presented information ([Appendix G](#)) on actual and forecasted 2017-19 biennium general fund revenue compared to the 2017 Legislative Assembly forecast. She said sales tax collections in August 2017 were \$4.5 million more than the forecast and individual income tax collections were \$3.4 million more than the forecast. She said actual 2017-19 biennium revenue collections, through August 2017, are \$9.0 million more than the forecast.

Ms. Sharp presented information ([Appendix H](#)) on actual and forecasted 2017-19 biennium general fund revenue compared to the 2015-17 biennium. She said the total 2017-19 biennium revenue collected through August 2017 is \$625.7 million. She said sales tax revenue collected through August 2017 is \$43.9 million less than 2015-17 biennium revenue collected through August 2015.

### IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE

Pursuant to Section 54-14-03.1, Ms. Sharp presented information ([Appendix I](#)) on irregularities in the fiscal practices of the state. She presented the following fiscal irregularities for the period May 2017 through July 2017:

Fiscal Irregularity	Agency	Description	Amount
Pay adjustment	North Dakota Vision Services - School for the Blind	Pay adjustment for 3 teachers working additional days for summer contracts	\$6,246
Retroactive pay	Parks and Recreation Department	Additional duties assumed by 1 individual	\$3,000
Retroactive pay	Office of Management and Budget	Additional duties assumed by 2 individuals	\$14,500
Retroactive pay	Attorney General	Additional duties assumed by 1 individual	\$1,415
Retroactive pay	Council on the Arts	Additional duties assumed by 3 individuals related to various grant reporting from July 2016 to June 2017	\$19,200
Severance pay	State Auditor's office	Settlement agreements for 2 individuals	\$36,555
Severance pay	Tobacco Prevention and Control Committee	Elimination of agency	\$400,739
Severance pay	Department of Veterans' Affairs	Reduction in force of 1 individual	\$10,719
Severance pay	Department of Human Services	Reduction in force of 1 individual	\$9,592
Severance pay	Department of Financial Institutions	Voluntary Separation Incentive Program	\$17,881
Severance pay	Office of Management and Budget	Voluntary Separation Incentive Program	\$59,225
Severance pay	Attorney General	Voluntary Separation Incentive Program	\$208,406
Severance pay	State Department of Health	Voluntary Separation Incentive Program	\$57,343
Severance pay	Indian Affairs Commission	Voluntary Separation Incentive Program	\$17,127
Severance pay	Department of Human Services	Voluntary Separation Incentive Program	\$956,019
Severance pay	Highway Patrol	Voluntary Separation Incentive Program	\$44,455
Severance pay	Department of Corrections and Rehabilitation	Voluntary Separation Incentive Program	\$16,171
Severance pay	Adjutant General	Voluntary Separation Incentive Program	\$19,013
Severance pay	Parks and Recreation Department	Voluntary Separation Incentive Program	\$44,911
Severance pay	State Water Commission	Voluntary Separation Incentive Program	\$90,066
Overspending of line item	Council on the Arts	Overspent salaries and wages line item in 2015-17 biennium. Overage will be charged to the 2017-19 biennium appropriation.	\$2,645

In response to a question from Representative Delzer, Ms. Sharp said the Tobacco Prevention and Control Committee authorized 6 months of severance pay for nine employees prior the agency being eliminated at the end of June 2017. She said the funding was available in the agency's 2015-17 biennium appropriation. She said each individual received an amount equal to 6 months of the employee's monthly salary.

### EMPLOYEE BONUSES

Ms. Sharp said Section 54-06-30 requires the Human Resource Management Services (HRMS) Division of OMB to report to the Budget Section regarding state employee bonuses. She said state agencies may not give bonuses to more than 25 percent of its employees, except in special circumstances approved by HRMS. She said no agencies provided performance bonuses to more than 25 percent of their employees for the reporting period ending June 2017.

### STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS

Ms. Sharp presented information ([Appendix J](#)) on state agencies that applied for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. She said for the period May 2017 through September 2017, the following agencies have applied for a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount
Attorney General	August 2016 through December 2017	\$13,850,000
Department of Transportation	January 2018 through January 2021	\$1,584,000

Ms. Sharp said for the period May 2017 through September 2017, the following agencies were awarded a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount
Attorney General	August 2016 through December 2017	\$10,000,000

In response to a question from Representative Carlson, Ms. Sharp said she would provide additional detail to the Budget Section regarding the use of the \$10 million federal grant awarded to the Attorney General.

### AGENCY REQUESTS APPROVED BY THE EMERGENCY COMMISSION - AUGUST 22, 2017, MEETING

Ms. Sharp said the Emergency Commission met in a special meeting on August 22, 2017, and approved Request #1900 made by the Adjutant General to borrow \$1.5 million from the Bank of North Dakota. She said the funding will be provided to the Agriculture Commissioner to administer an emergency hay transportation assistance program for livestock producers experiencing hardship due to drought conditions of the state.

Ms. Sharp said the Emergency Commission also approved Request #1901 made by the Agriculture Commissioner to increase special funds spending authority to accept \$1.5 million from the Adjutant General for the purpose of the emergency hay transportation assistance program.

Ms. Sharp said these requests ([Appendix K](#)) were made under Section 37-17.1-22. She said the section only requires approval from the Emergency Commission.

### AGENCY REQUESTS APPROVED BY THE EMERGENCY COMMISSION - SEPTEMBER 25, 2017, MEETING

Chairman Bellew directed the Budget Section to consider agency requests ([Appendix L](#)), which have been authorized by the Emergency Commission and forwarded to the Budget Section pursuant to Chapter 54-16. Ms. Sharp provided information regarding the following requests that were authorized by the Emergency Commission and require consideration by the Budget Section:

- **Office of Adjutant General (Request #1903)** - Request authorization to spend \$528,868 from the state disaster relief fund pursuant to Section 37-17.1-27 for reimbursing political subdivisions for the state share of disaster-related costs that have been incurred and submitted to the Adjutant General for payment relating to previous state disasters.

The Office of the Adjutant General provided additional information ([Appendix M](#)) regarding Department of Emergency Services pending disaster payments.

- **Office of Adjutant General (Request #1905)** - Request approval for a line item transfer of \$300,000 from the Department of Emergency Services operating expenses line item to the radio communications line item relating to the purchase of a portable communications tower to improve communications in areas of limited service.

- **Office of Adjutant General (Request #1906)** - Request approval to accept and spend \$10 million from a federal Department of Justice grant to repay the Bank of North Dakota for a portion of the loans obtained for expenses incurred by the state for law enforcement support.

**It was moved by Senator Holmberg, seconded by Senator Robinson, and carried on a roll call vote that the Budget Section approve the Office of the Adjutant General's Requests #1903, #1905, and #1906, which were approved by the Emergency Commission.** Representatives Bellew, Boe, Boehning, Brabandt, Brandenburg, Carlson, Delmore, Delzer, Hogan, Kempenich, Kreidt, Martinson, Meier, Mock, Monson, Nathe, Nelson, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Dever, Grabinger, Heckaman, Hogue, Holmberg, Klein, Lee, Mathern, Oehlke, Robinson, Sorvaag, and Wardner voted "aye." No negative votes were cast.

### **NORTH DAKOTA UNIVERSITY SYSTEM - LOCAL FUNDS REPORT**

Mr. David Krebsbach, North Dakota University System, presented information ([Appendix N](#)) regarding the sources of funds received for construction projects of entities under the control of the State Board of Higher Education pursuant to Section 15-10-12.3. He said there was one project, the Seed Conditioning Plants at the North Dakota State University Extension Service, that was authorized during the 2015-17 biennium that was continued into the 2017-19 biennium. He said the expected completion date for this project is June 2019.

Mr. Krebsbach said there were nine state-funded major capital projects with local match requirements and carryover projects from previous bienniums that were continued into the 2015-17 biennium. He said six of the projects were completed by June 30, 2017, one project was canceled, and two projects were continued into the 2017-19 biennium. He said the following projects were completed by June 30, 2017:

- Communications and Creative Arts Center at Bismarck State College
- Plant services building at Minot State University
- Western 4-H Camp in Washburn of the North Dakota State University Extension Service
- Central Grasslands agronomy laboratory of the Experiment Station
- Workforce training center addition at Williston State College
- Minard Hall renovation at North Dakota State University

Mr. Krebsbach said the law school renovation and space utilization study project at the University of North Dakota was canceled as of July 1, 2015. He said the Theodore Roosevelt Center project at Dickinson State University has an expected completion date of 2020 and the Valley City State University hillside slope failure project has an expected completion date of December 2017.

### **NORTH DAKOTA UNIVERSITY SYSTEM - VALLEY CITY STATE UNIVERSITY INTEGRATED CARBON PLANT PROJECT**

Mr. Rick Tonder, Director of Facility Planning, North Dakota University System, presented information ([Appendix O](#)) regarding the integrated carbon plant project at Valley City State University (VCSU) pursuant to Section 3 of 2017 Senate Bill No. 2196. He said VCSU has developed a request for proposals to solicit interest from activated carbon vendors, plant designers, plant constructors, and plant operators. He said the request for proposals have been advertised in newspapers and the OMB procurement website. He said the proposals are due on October 26, 2017. He said VCSU will develop a business plan that will result in revenue sufficient to retire all revenue bond debt and provide VCSU with a good bond credit rating.

In response to a question from Representative Schmidt, Mr. Tonder said if VCSU does not receive a commitment to purchase and distribute activated carbon from VCSU, the project will be terminated and no revenue bonds will be issued.

### **DEPARTMENT OF TRANSPORTATION FEES**

Mr. Mark Nelson, Deputy Director, Department of Transportation, presented information ([Appendix P](#)) regarding fees charged by the department in comparison to the actual cost of providing the services for which the fee is charged pursuant to Section 13 of 2017 Senate Bill No. 2012. He said during the 2015-17 biennium, driver's license fee collections totaled approximately \$8.4 million while driver's license expenditures, including information technology costs, totaled \$13.4 million. He said during the 2015-17 biennium, approximately \$27.2 million of motor vehicle registration fee collections were spent on motor vehicle registration-related expenditures.

In response to a question from Senator Lee, Mr. Nelson said the information technology costs associated with driver's licenses are related to the ongoing operational costs of the system on the Information Technology Department mainframe.

In response to a question from Representative Nathe, Mr. Nelson said the cost to produce a driver's license is estimated at \$21. He said the department charges \$15 per driver's license. He said North Dakota has approximately 550,000 licensed drivers. He said the cost to produce a motor vehicle plate is \$5.95 and shipping and handling costs an additional \$4. He said the department charges \$5 per motor vehicle plate.

## FINANCE FACTS BROCHURE

At the request of Chairman Bellew, the Legislative Council staff presented the [2017 North Dakota Finance Facts](#) pocket brochure.

## FORM OF BUDGET DATA

Representative Schmidt suggested the Budget Section consider a motion relating to the form of SWC budget documents and appropriations bill for presentation to the Legislative Assembly.

In response to a question from Chairman Bellew, Representative Schmidt said SWC currently submits its budget with only two line items, totaling \$722.2 million for the 2017-19 biennium. He said while presenting the SWC budget in two line items is convenient for the agency, monitoring the use of those funds by the Legislative Assembly is difficult. He said the proposed motion would allow for greater transparency regarding the SWC's budget. He said the Legislative Assembly in Section 5 of 2017 House Bill No. 1020 provided direction to SWC and OMB on the form of the SWC budget; however, Governor Burgum vetoed this section. He said his proposal is for the SWC budget request and appropriation bill be submitted similarly to the Legislative Assembly directive in 2017 House Bill No. 1020. He said the Legislative Council has authority under Section 54-44.1-07 to determine how agencies and OMB submit budgets and budget recommendations to the Legislative Assembly for an upcoming biennium.

**It was moved by Representative Schmidt, seconded by Senator Lee, and carried on a roll call vote that pursuant to Section 54-44.1-07:**

- **The 2019-21 biennium budget request for the State Water Commission and the related draft appropriations Act for the State Water Commission submitted by the Office of Management and Budget for consideration by the 66<sup>th</sup> Legislative Assembly identify funding separately in a salaries and wages line item, operating expenses line item, capital assets line item, project carryover line item, new projects line item, and any additional line items as determined necessary by the commission or the Office of Management and Budget; and**
- **The State Water Commission present funding requests for projects for the 2019-21 biennium in a manner consistent with the funding designations identified in Section 5 of 2017 House Bill No. 1020.**

Representatives Bellew, Boe, Boehning, Brabandt, Brandenburg, Carlson, Delmore, Delzer, Hogan, Kempenich, Kreidt, Martinson, Mock, Monson, Nathe, Nelson, Pollert, Sanford, Schatz, Schmidt, and Vigessaa and Senators Dever, Grabinger, Heckaman, Hogue, Holmberg, Klein, Lee, Mathern, Oehlke, Robinson, Sorvaag, and Wardner voted "aye." No negative votes were cast.

## STATE TREASURER - OUTSTANDING WARRANTS AND CHECKS

Ms. Kelly L. Schmidt, State Treasurer, presented information ([Appendix Q](#)) on warrants and checks outstanding for more than 90 days and less than 3 years pursuant to Section 54-11-01. She said the total number of outstanding checks in state fiscal year 2017 increased by 7.5 percent compared to state fiscal year 2016, while the total dollar amount of outstanding checks decreased by 8.5 percent during this time period. She said the total amount of outstanding checks for fiscal year 2017 was \$2.4 million. She said 3,476 outstanding checks from fiscal year 2014 totaling \$337,657 will be transferred to the Department of Trust Lands' Unclaimed Property Division in October 2017.

## DEPARTMENT OF COMMERCE REPORTS - RENAISSANCE FUND ORGANIZATIONS ANNUAL AUDITS

Ms. Rikki Roehrich, Program Manager, Department of Commerce, presented information ([Appendix R](#)) regarding annual audits of renaissance fund organizations pursuant to Section 40-63-07(9). She said there are 57 cities that have a renaissance zone while 2 cities have terminated their zones. She said 8 cities have established a renaissance fund organization, including Casselton, Fargo, Jamestown, Hazen, Mayville, West Fargo, Hope, and Grand Forks. She said since 1999, a total of \$10.5 million in tax credits have been authorized for projects by the Legislative Assembly. She said \$11.3 million has been invested in renaissance fund organizations

and \$5.6 million worth of credits have been claimed. She said \$4.9 million of tax credits are still available, of which \$2.3 million are committed credits and \$2.6 million are uncommitted credits.

### **ATTORNEY GENERAL - LITIGATION-RELATED EXPENSES**

Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office, presented information ([Appendix S](#)) regarding a report on all expenditures for litigation-related expenses from the Industrial Commission litigation fund pursuant to Section 5 of 2017 House Bill No. 1003. He said as of September 28, 2017, the Attorney General's office has spent \$65,465 on six lawsuits from the litigation fund for litigation-related expenses during the 2017-19 biennium. He said five of the lawsuits relate to natural resource topics, including hydraulic fracking, venting and flaring, and methane concerns. He said litigation expenses related to the Dakota Access Pipeline protests totaled \$340 during the 2017-19 biennium.

### **NORTH DAKOTA OUTDOOR HERITAGE FUND - BIENNIAL REPORT**

Mr. Jim Melchior, Chairman, Outdoor Heritage Fund Advisory Board, presented the board's 2015-17 biennial report ([Appendix T](#)). He said the North Dakota outdoor heritage fund received \$18,650,155 during the 2013-15 biennium and \$19,978,952 during the 2015-17 biennium. He said 2017-19 biennium funding for the North Dakota outdoor heritage fund is limited to \$10 million. He said nine grant rounds have been held since 2013, resulting in \$31,347,123 being awarded to 112 projects throughout North Dakota. He said four additional grant rounds are scheduled during the 2017-19 biennium with application deadlines of November 1, 2017; April 1, 2018; October 1, 2018; and May 1, 2019.

### **STATE FIRE MARSHAL EXPENDITURES**

Mr. Ken Sisk, Acting State Fire Marshal, Attorney General's office, presented information ([Appendix U](#)), regarding expenditures by certified fire departments and district funds received from the insurance tax distribution fund and reserve fund balances for 2016 and any information available for 2017, pursuant to Section 18-04-02.

Mr. Sisk said on or before October 31 of each year, the auditor, secretary of a city, or rural fire department of an organized fire department must file with the State Fire Marshal and Insurance Commissioner a certificate stating existence of the fire department, date of its organization, number of engines, number of hook and ladder trucks, and the type of water supply system used by the department. He said certified fire departments, certified rural fire departments, and certified fire protection districts receiving funds are required to file a report with the State Fire Marshal detailing expenditures of funds and its committed and uncommitted reserve balances. He said the report must identify the purpose of any committed reserve balance and anticipated time period for spending the committed reserves. He said the Insurance Commissioner computes the amounts due to certified fire departments on December 1 of each year, and distributes the funds to each fire service jurisdiction in December of each year. He said to be eligible, fire departments from cities, townships, or fire districts must be in operation for at least 8 months.

Mr. Sisk said 374 fire departments received \$7,840,603 in 2015 and a total of \$523,403,441 in premiums were reported by 18,601 entities. He said the number of departments receiving funding in 2015 increased by 6 percent and the total amount of funding provided increased by 14 percent from 2014 to 2015.

In response to a question from Representative Brandenburg, Mr. Sisk said the State Fire Marshal's office sends a certificate of existence to local fire departments for each department to complete and return to the State Fire Marshal. After the State Fire Marshal sends the certificate to the Insurance Commissioner, the Insurance Commissioner allocates funding from the insurance tax distribution fund to the eligible fire departments.

In response to a question from Representative Delzer, Mr. Sisk said the certificate of existence application report was shortened to encourage more participation by fire departments. He said one question on the report requires the fire department to disclose how funds are being expended. He said some fire departments do not complete the report in full, and as a result, the State Fire Marshal's office contacts the fire departments to collect the remaining information needed to complete the report. He said the response rate of reports received from fire departments has increased now that certificates are delivered electronically.

Representative Delzer expressed concern that local fire departments are not reporting a complete record of their expenditures and reserve fund balance.

In response to a question from Representative Pollert, Mr. Sisk said if a fire department does not send a certificate to the State Fire Marshal, the fire department will not receive a distribution from the Insurance Commissioner. He said the funding will instead be deposited in the general fund.

## DEPARTMENT OF CORRECTIONS AND REHABILITATION - INMATE REPORT

Mr. Dave Krabbenhoft, Director of Administration, Department of Corrections and Rehabilitation, presented information ([Appendix V](#)) regarding the department's prison population management plan, inmate admissions, and the number of inmates the department has not admitted after sentencing, pursuant to Section 54-23.3-11. He said prison inmate admission is prioritized based on the severity of offense. He said there are 10 levels of prioritization with violent Class AA felony offenses as the top priority in level 1 and nonviolent Class A misdemeanor offenses ranking as the lowest priority in level 10. He said in cases where there are multiple offenses, prioritization will be assigned using the highest ranking priority level.

Mr. Krabbenhoft said the maximum operational capacity for male inmates is 1,624 while the maximum operational capacity for female inmates is 224. He said as of September 25, 2017, the average daily inmate population for males was 1,600 and the average daily inmate population for females was 224. He said he anticipates the average daily inmate population for females to decline. He said the number of inmate admissions from July 1, 2017, to September 25, 2017, was 323 males and 70 females.

Mr. Krabbenhoft said prioritization of inmate admissions begins in the month following the month in which the average daily inmate population exceeds maximum operational capacity. He said the department's inmate census has not exceeded the maximum operational capacity and as a result, the department has not refused admittance of any inmates after sentencing. He said he anticipates prioritization will start in January 2018. He said the department anticipates providing technical expertise and resources, such as electronic monitoring and supervision, to assist local jails.

Representative Nelson suggested the Budget Section receive additional information from the Department of Corrections and Rehabilitation related to the number of inmates admitted in each prioritization level.

Senator Mathern suggested the Budget Section receive additional information from the Department of Corrections and Rehabilitation related to the effect of jails recognizing good behavior and time served for certain inmates.

## STANDING ROCK SIOUX TRIBE - TAX AGREEMENTS

Section 57-39.8-02 requires a representative of the Standing Rock Sioux Tribe to provide an annual report to the Budget Section regarding any sales, use, or gross receipts tax agreements entered into by the Standing Rock Sioux Tribe and that the report identify projects totaling investment in essential infrastructure of at least 10 percent of tribal receipts under the agreement for that year.

Prior to the meeting, Mr. Dave Archambault II, Chairman, Standing Rock Sioux Tribe, submitted a letter ([Appendix W](#)) to the Legislative Council addressing this requirement and stating the tribe will not provide information to the Budget Section due to the Tax Commissioner terminating the tax agreement entered into by the tribe and the State of North Dakota.

The tax agreement between the Standing Rock Sioux Tribe and the State of North Dakota went into effect in July 2016. The agreement established a sales tax, farm machinery gross receipts tax, alcoholic beverage gross receipt tax, and use tax on the Standing Rock Reservation. The tax revenue collected from this agreement was deposited in the state treasury. Of the amount collected, 80 percent was to be disbursed on a monthly basis to the tribe, less a 3 percent administration fee to the state. The agreement limited the total revenue to be paid to the tribe to \$2 million per biennium.

Chairman Bellew asked Mr. Ryan Rauschenberger, Tax Commissioner, to provide information related to the tax agreement entered into by the state and the Standing Rock Sioux Tribe. Mr. Rauschenberger said state laws have to be adopted by the tribe in order to administer and enforce the tax agreements. He said after the agreement went into effect, there was a disagreement between the state and the tribe regarding how casinos on the Standing Rock Reservation were taxed. He said state laws do not recognize a casino as a government entity. As a result, he said, vendors of the casino were charged sales and use tax. He said the tribe believed the casino should be exempt from sales and use tax and began administering exemption certificates to vendors of the casino, which was prohibited in the tax agreement entered into by the state and the tribe. As a result, Mr. Rauschenberger terminated the agreement in March 2017.

In response to a question from Senator Mathern, Mr. Rauschenberger said the Tribal Taxation Issues Committee has had discussions related to future tax agreements between the state and the tribe and that those discussions are ongoing.



### THREE AFFILIATED TRIBES EXPENDITURES

Mr. Allen Nygard, Chief Executive Officer, Three Affiliated Tribes of the Fort Berthold Reservation, provided information ([Appendix X](#)) regarding fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects completed by the Three Affiliated Tribes of the Fort Berthold Reservation, as well as each project's cost, using oil and gas tax receipts pursuant to Section 57-51.2-02. He said the tribe's fiscal year 2016 oil tax revenue totaled \$96.7 million, including gross production tax of \$48.9 million and oil extraction tax of \$47.8 million. He said fiscal year 2017 tax revenue collected totaled \$105.8 million, including \$53.7 million from gross production tax and \$52.1 million from oil extraction tax. He said 10 percent of tax revenue collected during state fiscal years 2016 and 2017 was \$9.7 million and \$10.6 million, respectively. He said in tribal fiscal year 2016, \$26.0 million was spent on the reconstruction of the Bureau of Indian Affairs Route 12 near Mandaree. He said in tribal fiscal year 2017, \$25.0 million was spent to complete the reconstruction of Route 12. He said the Three Affiliated Tribes had the following expenditures by major category during tribal fiscal years 2015, 2016, and 2017:

- Education - \$11.7 million
- Health care - \$40.1 million
- Economic development - \$31.3 million
- Public safety - \$32.3 million
- Natural resources/Enforcement - \$35.0 million
- Public works - \$18.4 million
- Roads - \$131.0 million
- Regulation - \$27.3 million
- Housing - \$51.4 million
- Law enforcement courthouse - \$17.4 million
- Community centers - \$46.0 million
- Schools - \$17.0 million
- Drug treatment - \$25.0 million
- Section 17 - \$5.8 million
- Refinery/Oil midstream - \$41.0 million
- Missouri River Resources - \$52.0 million
- Total - \$582.7 million

In response to a question from Representative Nelson, Mr. Nygard said the tribe receives approximately \$560,000 of federal funding annually from the Bureau of Indian Affairs for road infrastructure maintenance. He said road construction costs several million dollars per mile; therefore, a majority of project funding for tribal road systems is provided by the tribe's general fund.

In response to a question from Representative Carlson, Mr. Nygard said the tribe anticipates spending the 2017-19 biennium oil and gas tax revenue distribution allocation provided to the tribe on road infrastructure and social services. He said the annual tribal budget for road infrastructure is approximately \$30 million. He said the tribe anticipates spending approximately \$50 million on health care and \$11 million on education annually. He said the tribe anticipates spending approximately \$50 million per year on law enforcement and \$2 million on drug enforcement per year.

In response to a question from Senator Mathern, Mr. Nygard said the total cost of providing services to tribal children addicted to methamphetamine is difficult to quantify. He said the cost to provide health care for these children is substantial. He said the tribe is attempting to address the needs of these children and the affected families, including education, mental health, and physical health needs.

### COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Chairman Bellew announced the next meeting of the Budget Section is scheduled for Wednesday, December 6, 2017.

No further business appearing, Chairman Bellew adjourned the meeting at 2:20 p.m.

---

Allen H. Knudson  
Legislative Budget Analyst and Auditor

---

Levi Kinnischtzke  
Fiscal Analyst

ATTACH:24