

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GOVERNMENT FINANCE COMMITTEE

Wednesday, August 28, 2019
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Senator Ronald Sorvaag, Chairman, called the meeting to order at 9:30 a.m.

Members present: Senators Ronald Sorvaag, Howard C. Anderson, Jr., Randy Burckhard, Dwight Cook, Jordan Kannianen, Diane Larson, Erin Oban, Jessica Unruh; Representatives Bert Anderson, Jeff Delzer, Sebastian Ertelt, Jay Fisher, Michael Howe, Corey Mock, Gary Paur, Mike Schatz, Michelle Strinden

Member absent: Representative Larry Bellew

Others present: See [Appendix A](#)

The Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#) and reviewed the [State Budget Actions for the 2019-21 Biennium](#) report which identifies agency and overall appropriations, revenue projections used during the 2019 legislative session, and other historical information affecting the state budget.

STATE BUDGET INFORMATION

Mr. Joe Morrisette, Director, Office of Management and Budget, presented information ([Appendix B](#)) regarding the status of the general fund and other state budget information. He presented the following information on the final status of the general fund for the 2017-19 biennium:

Unobligated general fund balance - July 1, 2017		\$65,000,000
Add		
Total general fund revenue for the 2017-19 biennium		4,913,448,662
Balance obligated for authorized carryover from the 2017-19 biennium		99,271,093
Total estimated available		\$5,077,719,755
Less		
2017-19 biennium general fund ongoing appropriations	(\$4,295,624,415)	
2017-19 biennium general fund one-time appropriations	(14,638,226)	
Authorized carryover from previous biennium	(99,271,093)	
2019-21 authority used in 2017-19 pursuant to emergency clause	(106,000)	
Supplemental and deficiency appropriations	(115,560,181)	
Appropriation adjustments and cancellations	9,498,529	
Unspent general fund appropriations	49,782,505	
Total appropriations and adjustments		(\$4,465,918,881)
Estimated ending balance - June 30, 2019 - Before transfers and adjustments		\$611,800,874
Transfer to budget stabilization fund		(545,902,107)
Net effect of other transfers, adjustments, and cash certifications		(898,767)
Ending unobligated general fund balance - June 30, 2019		\$65,000,000

Mr. Morrisette said actual general fund revenues were \$249.6 million, or 5.4 percent more than estimated. He said legacy fund earnings and corporate income tax collections were the largest contributors to the increase in actual revenue collections at \$155.3 million and \$60.2 million more than the estimate respectively. He said Dickinson State University had canceled appropriations of \$9.5 million related to the Theodore Roosevelt Presidential Library project in December 2018.

In response to a question from Chairman Sorvaag, Mr. Morrisette said it is possible corporate income tax collections could decrease if corporations choose to elect the single sales factor apportionment method, but that will not be known until October 2019 when the corporate income taxes are filed.

In response to a question from Representative Delzer, Mr. Morrisette said the State Mill and Elevator transfer to the general fund was \$2.2 million less than estimated. He said the state mill reported that due to the unfunded liability of the state pension plan, the income available for transfer was less than anticipated. He said government accounting standards require entities, such as the state mill, to use a discounted assumed rate of return relating to the state pension liability.

Mr. Morrisette presented information ([Appendix C](#)) regarding the status of the general fund and other state budget information. He presented the following information on the current status of the general fund for the 2019-21 biennium:

Unobligated general fund balance - July 1, 2019		\$65,000,000
Add		
Balance obligated for authorized carryover from the 2017-19 biennium		130,852,782
Revenues collected as of July 31, 2019		601,942,664
Remaining forecasted revenues		4,263,393,599
Total estimated funds available		\$5,061,189,045
Less		
2019-21 biennium general fund ongoing appropriations	(\$4,794,924,098)	
2019-21 biennium general fund one-time appropriations	(48,639,068)	
Authorized carryover from previous biennium	(130,852,782)	
2019-21 authority used in 2017-19 pursuant to emergency clause	106,000	
Total appropriations and adjustments		(\$4,974,309,948)
Estimated ending balance - June 30, 2021		\$86,879,097

Mr. Morrisette said actual general fund revenue collections for the month of July 2019 were \$42.4 million, or 7.6 percent more than estimated. He said sales and use tax, individual income tax, and mineral leasing fee collections were the largest contributors to the increase in actual revenue collections at \$24 million, \$13.8 million, and \$3.8 million which is more than the estimate respectively.

In response to a question from Senator Burckhard, Mr. Morrisette said because the general fund transfer to the budget stabilization fund is \$260,817,128 more than estimated, the Office of Management and Budget (OMB) anticipates only \$50 million, rather than \$75 million, of oil and gas tax collections will be deposited in the fund during the 2019-21 biennium because OMB estimates the fund will then be at its maximum balance of \$726,534,475. He said the oil and gas tax transfers to the budget stabilization fund are anticipated to be in January or February of 2020.

LEWIS AND CLARK INTERPRETIVE CENTER STUDY

At the request of Chairman Sorvaag, the Legislative Council staff presented a memorandum entitled [Lewis and Clark Interpretive Center Study - Background Memorandum](#) which provides background information regarding the Lewis and Clark Interpretive Center and revenue and expenditure history of the facility. The Legislative Council staff said the memorandum identifies a proposed study plan for the committee's study of volatility of state revenue sources. He said the proposed study plan is:

1. Review information from the Parks and Recreation Department regarding historical revenues and expenditures of the Lewis and Clark Interpretive Center as well as comparative data on revenues and expenditures from state parks.
2. Review information from the Parks and Recreation Department regarding historical fees and visitation data for the Lewis and Clark Interpretive Center and Fort Mandan.
3. Receive information from the Parks and Recreation Department and the Lewis and Clark Fort Mandan Foundation regarding historical initiatives designed to increase visitation at the Lewis and Clark Interpretive Center.
4. Receive information from the Department of Transportation regarding funding provided for the Lewis and Clark Interpretive Center and the potential for future funding.
5. Develop recommendations and any necessary legislation to implement the recommendations.
6. Prepare a final report for presentation to the Legislative Management.

Ms. Melissa Baker, Director, Parks and Recreation Department, presented information ([Appendix D](#)) regarding historical information related to fees, visitation data, revenues by source, and expenditures of the Lewis and Clark Interpretive Center. She said the 2015 Legislative Assembly appropriated \$2.05 million to transfer the Lewis and Clark Interpretive Center from the Lewis and Clark Fort Mandan Foundation to the state. She said the department operates the interpretive center in conjunction with the Fort Mandan historic site and has four permanent galleries, two rotating history and art galleries, a museum store, event center rental space, a historical library, and a rest area operated in conjunction with the Department of Transportation. She said because the interpretive center facility has high energy costs, beginning in fiscal year 2018 the interpretive center began capital improvements expending \$74,557 in 2018 and \$331,653 in 2019 to improve the building. She said the interpretive center concession located in the museum store is used to supplement the operations of the facility.

In response to a question from Chairman Sorvaag, Ms. Baker said use of the building has increased from fiscal year 2017 to fiscal year 2018, but admissions, tours, and facility rentals have decreased. She said traffic counters were installed in 2018 to provide a better count of building use. She said prior to the traffic counters, building use was being counted only during the operating hours of the facility and since the rest area operates 24 hours a day, that data was not being captured prior to 2018.

Representative Delzer provided additional historical information on the Lewis and Clark Interpretive Center. He said the rest area and initial interpretive center were originally paid in part with \$800,000 of federal safety funds through the Department of Transportation and were built on state-owned property. He said the Lewis and Clark Fort Mandan Foundation expanded the interpretive center utilizing the same materials Lewis and Clark used for their structures. He said by the time the construction was done, the building cost approximately \$6 million and created financial issues for the foundation. He said the 2015 Legislative Assembly directed the Parks and Recreation Department to begin operating the interpretive center, and the Lewis and Clark Fort Mandan Foundation pledged to provide \$100,000 to \$160,000 to the interpretive center to allow free admission for student tours; however, the foundation has discontinued providing that funding.

In response to a question from Senator Burckhard, Ms. Baker said 3 full-time equivalent positions and a number of seasonal employees staff the interpretive center and Fort Mandan.

Senator Unruh requested the Parks and Recreation Department to provide a detailed breakdown of expenses, by fiscal year, of the Lewis and Clark Interpretive Center.

Senator H. Anderson suggested the interpretive center sell memberships, which could be purchased to allow access to the facility without additional charge and the membership could provide a discount on purchases at the museum store. He said the foundation sold memberships and he believes it was beneficial to the facility and the individuals who purchased the membership.

Senator Kannianen suggested the Parks and Recreation Department review or collect data on the peak use times of the rest area and interpretive center. He said this information could be used to target the hours of operation of the interpretive center to increase the visitors at the interpretive center.

Senator H. Anderson expressed concern with eliminating the interpretive center fee because other state parks charge a fee.

STATE AGENCY FEES STUDY

At the request of Chairman Sorvaag, the Legislative Council staff presented a memorandum entitled [State Agency Fees - Background Memorandum](#) which provides background information regarding the legislative history of changes to state agency fees and includes survey responses from state agencies regarding fees charged by each agency entitled [Survey of State Agency Fees](#). The Legislative Council staff said the proposed study plan is:

1. Receive information from the State Auditor regarding state agency fees and the special funds audit report.
2. Review the survey of state agency fees.
3. Determine the objective of the state agency fees study, including the possibility of studying a select number of state agency fees each interim.
4. Select agency fees to study.
5. Receive information from agencies which have fees being studied.
6. Develop recommendations and any necessary legislation to implement the recommendations.
7. Prepare a final report for presentation to the Legislative Management.

At the request of Chairman Sorvaag, Senator Cook reviewed the need for the study of state agency fees, including that a number of state agency fees have not been changed for many years. He said the State Auditor also has begun a performance audit of agency fees.

Mr. Donald LaFleur, Director, State Auditor's office, presented information ([Appendix E](#)) regarding the status of its performance audit of state agency fees. He said the audit covers the 2017-19 biennium and excludes any charges for taxes, fines, or penalties. He said, for North Dakota University System institutions, mandatory and other fees will be included. He said the State Auditor's office has completed its initial review of all state agencies and is now finishing collecting the revenue and expenditure data for fiscal year 2019. He said it will not be possible to collect all revenue and expenditure data for all fees because the information is not always recorded to the level of detail necessary to make the determination. He said the State Auditor's office has identified 1,200 fees and the report will include who pays the fee, whether the fee is required to cover costs, or if the fee only can cover costs. He said the State Auditor's office expects to have the report available by January 2020.

In response to a question from Chairman Sorvaag, Mr. LaFleur said options for reviewing fees could be by agency or scrutinizing fees paid directly by citizens.

In response to a question from Representative Delzer, Mr. LaFleur said the report will be organized by agency and an Excel file will be provided. He said the State Auditor's office has incurred 1,600 hours to date at a cost of \$100,000. He said the agencies may be incurring similar expenses as a result of the audit, but the State Auditor's office is attempting to obtain information without a significant impact to the agencies.

In response to a question from Senator Oban, Mr. LaFleur said the report also will include the date the fee was established and the last time the fee was changed.

Senator Cook said the committee should review if a service is being provided and if the cost of that service should be paid by a fee or if that service should be paid by tax collections. For example, he said, the 911 fee originally was being charged because homes had phone lines which identified a static location and now with cell phones, individuals needing 911 services can be anywhere. He said for these types of situations, it might be more appropriate to cover those costs with tax collections rather than a fee.

OTHER DUTIES OF THE GOVERNMENT FINANCE COMMITTEE

At the request of Chairman Sorvaag, the Legislative Council staff reviewed a memorandum entitled [Other Duties of the Government Finance Committee - Background Memorandum](#). The Legislative Council staff said in addition to its study responsibilities, the committee has been assigned the following duties:

- Review state budget information, including monitoring the status of revenues and appropriations.
- Receive a report before June 30, 2020, from the Department of Environmental Quality (DEQ) regarding DEQ's plan for boiler inspection fees to meet program expenses, pursuant to Section 32 of House Bill No. 1024 (2019).

PUBLIC ACCESS AND USE OF REAL PROPERTY STUDY

At the request of Chairman Sorvaag, the Legislative Council staff presented a memorandum entitled [Public Access and Use of Real Property Owned By the State of North Dakota - Background Memorandum](#) which provides background information regarding the Missouri River Correctional Center (MRCC) and the legislative history regarding the land use of the MRCC site. The Legislative Council staff said the proposed study plan is as follows:

1. Review past MRCC land use studies and conclusions.
2. Receive information from the Department of Corrections and Rehabilitation (DOCR) and the Parks and Recreation Department, from each agency's perspective, on the feasibility and desirability of transferring MRCC land for use by the public.
3. Receive information from the Parks and Recreation Department regarding its ability to establish a public use park on MRCC property and its ability to maintain the property in accordance with state statutes.
4. Receive information from DOCR regarding security risks related to public use of land around MRCC and a plan to mitigate those risks along with potential costs necessary to implement the mitigation plan.
5. Develop recommendations and any necessary legislation to implement the recommendations.
6. Prepare a final report for presentation to the Legislative Management.

Representative Delzer said the committee should consider input from the Department of Corrections and Rehabilitation Review Committee regarding recommendations it has for the MRCC site and other DOCR facilities that may impact the use of the MRCC site. He said he believes the best option is for MRCC to move to another location.

The committee conducted a tour of the MRCC site and of General Sibley Park, which is adjacent to the MRCC property.

Mr. Colby Braun, Director of Facility Operations, Department of Corrections and Rehabilitation, provided drone [footage](#), an aerial image of the MRCC site, and a map of the area ([Appendix F](#)). While on tour, representatives of DOCR said the department leases 295 acres of farmland at \$415 per acre and invested \$300,000 in 3 irrigation pivots. Representatives of DOCR said the department controls the weeds and natural grass by allowing the Hettinger Research Extension Center to keep its sheep on MRCC land not leased for agricultural production. Representatives of DOCR said if a state park is created out of all or part of the MRCC site, there is private land adjacent to the property between the MRCC site and General Sibley Park which could be purchased by the state and be included as part of a park.

Ms. Baker presented information ([Appendix G](#)) regarding the Parks and Recreation Department's perspective on the feasibility and desirability of transferring MRCC land for use by the public, the potential impact of transferring the MRCC land to the department, and the ability of the department to maintain the property. She said discussion about creating a park on the MRCC site began in 2009 after an ice jam on the Missouri River flooded the site. In 2013, she said, the Legislative Assembly approved a study of moving MRCC to an area adjacent to the Youth Correctional Center (YCC) in Mandan, and to use all or a portion of the MRCC site as a park. She said the study concluded it was not desirable to move MRCC to an area adjacent to YCC, but the study indicated it was possible but not desirable to locate a park on the MRCC site because it would increase the risk to the state to allow citizens to be in close proximity to inmates.

Ms. Baker said during the 2015 legislative session the Legislative Assembly provided a grant from the State Water Commission of \$1 million to the Parks and Recreation Department for developing recreational activity on sovereign lands. She said the Parks and Recreation Department began planning a day park on the site and in 2016 DOCR transferred a portion of MRCC land to the Parks and Recreation Department, but in 2017 the land was returned to DOCR. She said a memorandum of understanding was signed between the two departments, providing the Parks and Recreation Department would have the first option to purchase the land previously transferred if the MRCC site ever ceases operations or moves to another location. She said the study identified a desire to preserve the view shed of the land, which is directly across from Fort Lincoln. She said the Parks and Recreation Department's master plan for the MRCC land was a highly developed plan with an estimated cost, in 2017, of \$6.7 million. She said the plan included elevated platforms, band shells, and a swimming lagoon. She said discussions for the development of the land adjacent to the MRCC site did not include staffing issues, security issues, enforcement, and other operating costs which could be incurred by the Parks and Recreation Department or MRCC. She said there is a risk of investment loss because the area is in the flood plain.

Ms. Baker said there are recreational options in the area, with General Sibley Park being in close proximity and MRCC allows bow hunting on sections of the land on a permit basis. She said transferring only the 213 acres between the irrigated land and the Missouri River would not be considered large enough for a state park, but if the entire MRCC site were developed into a park, it would be large enough to be considered a state park.

In response to a question from Senator Oban, Ms. Baker said the land was under the Parks and Recreation Department's management for 6 months before being returned to DOCR.

Chairman Sorvaag said because state land can only be sold if approved by the Legislative Assembly, concerns of the property being sold to private parties should not be significant.

Mr. Braun presented information ([Appendix H](#)) regarding the DOCR's perspective on the feasibility and desirability of transferring MRCC land for use by the public, the potential impact of transferring the MRCC land to the Parks and Recreation Department, security risks related to public use of land around MRCC, its plan to mitigate those risks along with potential costs necessary to implement the mitigation plan, and a review of previous MRCC land use studies and conclusions. He said it is physically feasible to locate a day park on land near MRCC; however, it is not desirable to co-locate a day park and a minimum custody prison. He said the risk of co-locating on the same property may not be worth the risk because park user behavior is not predictable and one incident between the public and an inmate could be extremely costly to the state. He said the seclusion of the facility helps provide security between the public and the inmates. He said increasing public use in the area increases the possibility of contraband being brought into the facility, the public being on DOCR property, unauthorized contact

with inmates, and the need for additional law enforcement in the area. He said all of this potentially has a negative impact on the transition and re-entry process of the minimum security inmates.

Mr. Braun said if DOCR had to mitigate these risks, the entrance to the park would need to be from Washington Street and it would be necessary to construct a gated entrance to MRCC to prevent the public from inadvertently entering MRCC from 48th Street. He said additional cameras and increased correctional staff also would be needed. He said it is estimated to cost \$20 per linear foot to construct a permanent barrier between the public use land and MRCC, and the barrier could impact the transition and re-entry process of the minimum security inmates.

Mr. Braun said the 2014 MRCC land use and planning study which indicated it was physically feasible to relocate MRCC to a site adjacent to YCC in Mandan, but it was not desirable, provided three concepts of which only one was developed to keep MRCC at its current location at a cost of \$7.1 million. He said that amount would need to be adjusted for inflation to reflect the current cost.

In response to a question from Senator Larson, Mr. Braun said the residents living in close proximity to MRCC and the MRCC staff have good communications, which along with staff patrols of the area between those private properties and MRCC, reduce the risk to the public.

In response to a question from Representative Ertelt, Mr. Braun said for an inmate to be located at MRCC, that individual needs to have 42 months or less of the inmate's sentence remaining. He said based on 3-year old data, the recidivism rate is 40 percent.

No further business appearing, Chairman Sorvaag adjourned the meeting at 4:00 p.m.

Chris Kadmas
Fiscal Analyst

ATTACH:8