

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GOVERNMENT FINANCE COMMITTEE

Tuesday, February 11, 2020
Harvest 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., Dwight Cook, Jordan Kannianen, Erin Oban; Representatives Bert Anderson, Jeff Delzer, Sebastian Ertelt, Michael Howe, Mike Schatz, Michelle Strinden

Members absent: Senators Randy Burckhard, Diane Larson, Jessica Unruh; Representatives Larry Bellew, Jay Fisher, Corey Mock, Gary Paur

Others present: Allen H. Knudson and Brady A. Larson, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Senator Cook, seconded by Senator Anderson, and carried on a voice vote that the minutes of the August 28, 2019, meeting be approved as distributed.

Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, Legislative Council, presented information ([Appendix B](#)) regarding ongoing general fund revenues and appropriations in the state budget. He said the oil boom and bust cycle during the 1980s created budgetary challenges that lasted until the mid 1990s. He said the Legislative Assembly responded to the budget challenges by implementing the following changes:

- Limited the general fund's direct reliance on oil and gas tax revenues;
- Established a budget stabilization fund; and
- Established the foundation aid stabilization fund.

The Legislative Budget Analyst and Auditor said state revenues increased significantly during the oil boom that began in 2008. He said the increase in oil and gas development activity also prompted increased state spending for property tax relief programs, infrastructure development, public safety, and human service programs. He said the Legislative Assembly changed the oil and gas tax revenue allocation formulas to allocate revenue to various state funds. He said the Legislative Assembly established a policy for some of these funds of not appropriating the revenue until after it is received. He said the decline in oil prices during the 2015-17 biennium resulted in a 50 percent decrease in oil and gas tax revenues and nearly a 30 percent decrease in general fund revenues. He said the policy of setting aside oil and gas tax revenues for the next biennium helped to lessen the impact of the revenue reductions.

The Legislative Budget Analyst and Auditor said ongoing general fund revenues have been less than ongoing general fund spending since the 2015-17 biennium. He said approximately 8 percent, or \$400 million, of the general fund budget is related to oil and gas tax revenues received during the biennium. He said the ongoing budget also includes \$947 million of indirect oil and gas tax revenue as transfers from other funds. Of the \$5,071 million ongoing budget, he said, \$1,347 million, or 27 percent, is related to oil and gas tax revenues. He said ongoing general fund appropriations exceed ongoing general fund revenues by \$840 million for the 2019-21 biennium after excluding the estimated transfer of \$100 million of legacy fund earnings. He said options to address the gap between ongoing revenues and ongoing appropriations include additional general fund revenue growth, general fund tax increases, general fund spending reductions, using additional oil and gas tax revenues, and using additional legacy fund earnings.

In response to a question from Senator Oban, the Legislative Budget Analyst and Auditor said individual and corporate income tax rate reductions approved by the Legislative Assembly have affected the level of ongoing revenues.

Representative Delzer said \$400 million of oil and gas tax revenue, which is transferred to the general fund, is one of the first allocations to ensure the general fund consistently receives its share of oil and gas tax revenues.

The Legislative Council staff reviewed the [Estimated Revenue Sources and Distributions for Major State Funds for the 2019-21 Biennium](#).

In response to a question from Representative Delzer, Mr. Brady A. Larson, Assistant Legislative Budget Analyst and Auditor, Legislative Council, said the actual transfer into the budget stabilization fund was greater than anticipated and likely will reach its maximum balance of \$726 million. He said once the maximum balance is reached, oil and gas tax revenue will no longer be deposited into it and interest earnings will no longer be retained in the fund but be transferred to the general fund.

STATE BUDGET INFORMATION

Mr. Joe Morrisette, Director, Office of Management and Budget, presented information ([Appendix C](#)) regarding the status of the general fund and other state budget information. He presented the following information on the status of the general fund to date through January 31, 2020:

Unobligated general fund balance - July 1, 2019		\$65,000,000
Add		
Total general fund revenue for the 2017-19 biennium		1,727,360,748
Remaining forecasted revenues		3,217,230,138
Balance obligated for authorized carryover from the 2017-19 biennium		130,404,813
Total estimated available		\$5,139,995,699
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	(130,404,813)	
2019-21 authority used in 2017-19 pursuant to emergency clause	106,000	
Total appropriations and adjustments		(4,973,861,979)
Estimated ending balance - June 30, 2021		\$166,133,720

Mr. Morrisette said actual general fund revenues were \$121.6 million, or 7.6 percent more than estimated. He said sales tax and corporate income tax collections were the largest contributors to the increase in actual revenue collections at \$52.1 million and \$36 million more than the estimate respectively. He said the budget stabilization fund balance is \$666.7 million, which would require a transfer of oil and gas tax revenue of less than \$60 million to reach the maximum ending fund balance of \$726 million.

In response to a question from Representative Delzer, Mr. Morrisette said the budget stabilization fund retains the interest it earns until the fund reaches its maximum balance of \$726 million and any interest the fund earns in excess of that balance will be transferred to the general fund at the end of the biennium.

SALES TAX COLLECTIONS

Mr. Ryan Rauschenberger, Tax Commissioner, presented information ([Appendix D](#)) regarding an update on sales tax collections from Internet sales. He said 6,288 out-of-state businesses that sell online to North Dakota residents have registered with the state to comply with state law. He said total sales tax collections from remote sellers since June 21, 2018, through February 5, 2020, has been \$37 million, of which \$28.05 million is the state's portion and \$8.95 million is the local portion. He said marketplace sellers are companies that sell products on behalf of other retailers, such as Etsy and Amazon. He said these types of companies had total sales tax collections from October 1, 2019, through February 5, 2020, of \$6.57 million, of which \$4.89 million is the state's portion and \$1.68 million is the local portion. He said this total is also included in the remote sellers statistics referred to earlier.

In response to a question from Chairman Sorvaag, Mr. Rauschenberger said the sales tax revenue generated from Internet sales may not be new revenue, but replacement of sales tax revenue lost when people began choosing to purchase more items online rather than from a local retailer.

In response to a question from Representative Howe, Mr. Rauschenberger said retailers with sales of \$100,000 or more in the last calendar year need to collect sales taxes. He said this threshold is similar to other states.

OIL AND GAS UPDATE

Mr. Lynn Helms, Director, Department of Mineral Resources, presented information ([Appendix E](#)) regarding the status of oil and gas development in the state and projected state drilling activities. He said as of February 11, 2020, 56 oil rigs are operating in the state. He said the 56 oil rigs are three times more efficient than the oil rigs

operating when there were 218 operating in the state in 2015. He said, on average, it takes an oil rig 10 days to drill a 20,000-foot well. He said roughly 20 percent of the drilling activity is occurring outside the core Bakken area. He said the core area of the Bakken has oil inventory for the next 2 to 5 years, and he anticipates the core area will be completely drilled by then. He said there are 34,000 wells in production.

In response to a question from Chairman Sorvaag, Mr. Helms said after 5 years, production is expected to plateau for a 10-year period before it begins to decline. He said it is anticipated to take 20 years to completely drill the Bakken Formation.

In response to a question from Representative Delzer, Mr. Helms said the decline in production rate outside the core area is higher than in the core area due to more ground water and smaller initial production rate. He said the production rate decline in the core area is 40 to 45 percent by the end of the 1st year, 20 percent in the 2nd year, and 5 to 10 percent each subsequent year.

In response to a question from Chairman Sorvaag, Mr. Helms said the oil and gas industry is pursuing aggressively project tundra to capture carbon dioxide to use in enhanced recovery. He said there will be a market for carbon dioxide once it is captured.

In response to a question from Senator Cook, Mr. Helms said legacy fund deposits will begin to decline in 12 to 15 years and will continue to decline to the end of the century at which time North Dakota's oil reserves may be depleted.

Representative Delzer said that for every dollar oil prices are below the forecast, oil production needs to increase by 30,000 barrels to offset the reduction in price.

In response to a question from Senator Anderson, Mr. Helms said 10 to 12 percent of the oil reserves is currently being recovered. He said enhanced oil recovery projects potentially could increase recovery rates. He said 84 percent of natural gas is being captured as of December 2019.

In response to a question from Chairman Sorvaag, Mr. Helms said pipelines constructed to the West Coast would give North Dakota oil access to Asian markets.

Mr. Ron Ness, President, North Dakota Petroleum Council, presented information ([Appendix F](#)) regarding the status of oil and gas development in the state and the short-term and long-term outlooks for oil and gas development in the state. He said the discount on Bakken oil is now \$8.50 to \$9.00 per barrel. He said the Permian and the Bakken are premier oil developments. He said North Dakota and its local municipalities need to have an alternate source of revenue to replace the long-term reduction in oil tax revenues.

In response to a question from Representative Delzer, Mr. Ness said oil companies' capital budgets in the Bakken are remaining fairly steady compared to projected declines in other oil plays.

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.

Mr. Ron Henke, Deputy Director for Engineering, Department of Transportation, presented historical information ([Appendix G](#)) related to funding provided by the department for the Lewis and Clark Interpretive Center, and on the average cost to operate a rest area. He said in 2017, the Legislative Assembly directed the department to provide \$100,000 to the Lewis and Clark Interpretive Center for the operation of the rest area. He said similar rest areas and their annual operating cost, which includes janitorial and utility, are listed below.

- Larimore rest area off of US Highway 2 is \$60,000 annually;
- Alexander Henry rest area north of Grand Forks on Interstate 29 is \$69,000 annually; and
- Oriska rest area east of Valley City is \$109,000 annually.

In response to a question from Representative Delzer, Mr. Henke said the rest areas are not upgraded or remodeled on a scheduled program, they are upgraded, remodeled, or repaired as issues occur.

Representative Delzer said the Lewis and Clark Interpretive Center rest area was built with transportation enhancement funds and the plan was for the Lewis and Clark Foundation to maintain the facility.

In response to a question from Senator Cook, Mr. Henke said the Lewis and Clark Interpretive Center rest area previously had been operated by the Lewis and Clark Foundation. He said the Painted Canyon rest area on Interstate 94 west, which is similar, is operated by the National Park Service. He said the Painted Canyon facility does not charge an entrance fee.

Mr. Ryan Gardner, Interim Director, Parks and Recreation Department, presented information ([Appendix H](#)) regarding detailed historical information related to revenues and expenditures of the Lewis and Clark Interpretive Center and fees charged at the Lewis and Clark Interpretive Center compared to other state parks. He said in fiscal year 2015, the Parks and Recreation Department expended \$2 million in capital investments for the purchase of the Lewis and Clark Interpretive Center. He said siding and various other repairs to the facility were made in fiscal years 2018 and 2019. He said concession fund expenditures increased from \$96,588 to \$140,123 from fiscal year 2018 to 2019 as salary expenditures began being charged to the fund for staff working in that area of the facility. He said 2019 revenue at the Lewis and Clark Interpretive Center totaled \$78,142 compared to \$54,982 at Fort Abraham Lincoln State Park.

In response to a question from Representative Delzer, Mr. Gardner said the Lewis and Clark Interpretive Center staff will give interpretive tours.

In response to a question from Senator Anderson, Mr. Gardner said the Lewis and Clark Interpretive Center fee includes access to Fort Mandan.

PUBLIC ACCESS AND USE OF REAL PROPERTY STUDY

Chairman Sorvaag presented a concurrent resolution draft [[21.3004.01000](#)] to recognize the memorandum of understanding and option to acquire land entered by the Department of Corrections and Rehabilitation and the Parks and Recreation Department relating to the Missouri River Correctional Center land.

In response to a question from Senator Cook, Chairman Sorvaag said he believes the Parks and Recreation Department would be more interested in locating a park on this land if the Missouri River Correctional Center was relocated.

Representative Delzer said the memorandum of understanding relating to the land which is in place between the the Department of Corrections and Rehabilitation and the Parks and Recreation Department makes the option for first refusal subject to the approval of the Governor. He said the existing memorandum of understanding should also be changed.

Mr. Colby Braun, Director of Facility Operations, Department of Corrections and Rehabilitation, presented information ([Appendix I](#)) regarding inmate recidivism rates and other information related to the study. He said the recidivism rate from 2000 to 2015 generally has ranged from 35 to 40 percent with an exception of 45 percent in 2014.

In response to a question from Representative Ertelt, Mr. Braun said the Missouri River Correctional Center is for inmates with 42 months or less left to serve on their sentence. He said because inmates can be housed at multiple facilities during their sentence, it would be difficult to determine recidivism by facility.

In response to a question from Chairman Sorvaag, Mr. Braun said the Department of Corrections and Rehabilitation does not support locating a state park next to a correctional facility.

STATE AGENCY FEES STUDY

Mr. Donald LaFleur, Director, State Auditor's office, presented information ([Appendix J](#)) regarding the performance audit of state agency fees. He said the State Auditor's office (SAO) defined a fee as "a fixed charge, or a sum paid or charged for a service" and this definition excludes any charges for taxes, fines, or penalties. He said for the North Dakota University System, SAO used the definition of fees from the *North Dakota State Board of Higher Education Policy Manual*, Policy 805.3. He said these mandatory fees are defined as student fees, technology fees, North Dakota Student Association fees, and ConnectND fees. He said other fees are application fees, distance learning access fees, course fees, program fees, capacity enrollment fees, and other incidental fees.

In response to a question from Chairman Sorvaag, Mr. LaFleur said several fees may be deposited in a single fund; therefore, it is difficult to determine if related costs are being covered by the fee.

Ms. Brittani Reim, Auditor, State Auditor's office, said SAO reviewed North Dakota Century Code to find fees and to determine when the fee was created. She said more than 1,200 fees were reviewed.

In response to a question from Senator Cook, Ms. Reim said the oldest fee identified is a financial institutions fee which dates back to 1893.

Senator Cook suggested that fees could be selected for review by agency, or by the fees that generate the most revenue.

In response to a question from Senator Anderson, Mr. LaFleur said SAO did not ask the agencies for input or comments regarding the fees.

In response to a question from Chairman Sorvaag, Mr. LaFleur said agencies should be able to identify fee revenue by type, but it would be difficult for them to identify expenditures relating to a fee.

In response to a question from Senator Cook, Mr. LaFleur said 46 fees generate less than \$100 in biennial revenue and 224 fees generate revenue of less than \$5,000 per biennium.

At the request of Chairman Sorvaag, the Legislative Council staff presented a memorandum entitled [State Agency Fee Study - Recommendation Options](#) which provides information on options the committee may wish to consider when developing a recommendation as a result of its study of state agency fees. The Legislative Council staff said the committee could recommend the Legislative Assembly establish a process to allow for a periodic review, analysis, and evaluation of each agency fee. He said the recommendation could provide that an interim committee be assigned the duty to review a select number of fees each interim on a rotational basis, similar to the process used by the Taxation Committee in its review of state tax incentives, which is established in North Dakota Century Code Section 54-35-26. He said the committee may wish to develop a process for selection of the fees to be reviewed each interim and to determine the frequency of the review of each fee. He said the committee may wish to develop criteria to be considered in the review of each fee. He said if the committee chooses to proceed with the proposed recommendation of establishing a process of studying agency fees on a rotational basis, the committee could request the Legislative Council staff to prepare a bill draft with selected provisions for the committee's consideration at the next meeting.

Senator Cook suggested that the Higher Education Committee could review higher education-related fees and the Tax Committee could review fees charged by the Tax Department.

Senator Anderson suggested the committee develop a study template and have each agency analyze the fees for which it is responsible.

Chairman Sorvaag requested the Legislative Council staff to select up to five agency fees for the committee to review at the next meeting and prepare a bill draft establishing a process to periodically review agency fees for the committee to review at its next meeting. He said the next meeting will be in May 2020.

No further business appearing, Chairman Sorvaag adjourned the meeting at 2:35 p.m.

Chris Kadrmas
Fiscal Analyst

ATTACH:10