

**REPORT**  
**OF THE**  
**NORTH DAKOTA**  
**LEGISLATIVE MANAGEMENT**

Pursuant to Chapter 54-35 of the North Dakota Century Code



**SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**  
**2021**

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January 5, 2021

Honorable Doug Burgum  
Governor of North Dakota

Members, 67<sup>th</sup> Legislative  
Assembly of North Dakota

I have the honor to transmit the Legislative Management's report and recommendations of 26 interim committees.

Major recommendations include supporting the conversion of the Youth Correctional Center to a women's campus while maintaining the Dakota Women's Correctional and Rehabilitation Center as a community corrections resource center; continuing the higher education matching grant program; amending the higher education funding formula to increase funding for credits completed in career and technical education and computer science; codifying student transportation aid payment sections as the provisions existed on June 30, 2001, updating provisions to reflect current practices and reimbursement rates, and prohibiting school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements; establishing a percent of market value method for determining the amount of legacy fund earnings available to be spent each biennium and creating a legacy earnings fund; providing an appropriation of \$750,000 from the Capitol building fund to the Office of Management and Budget, of which \$460,950 is for costs associated with the implementation of changes to the State Capitol grounds for compliance with the federal Americans with Disabilities Act of 1990 and \$289,050 is for additional costs to improve accessibility of the State Capitol during the 2021-23 biennium; proposing statutory changes to North Dakota Century Code Title 60, including changes to definitions, licensure, and bonding requirements for grain warehouses and grain buyers; and addressing reorganization of the Uniform Juvenile Court Act.

The report also discusses committee findings and numerous other pieces of recommended legislation. In addition, the report contains brief summaries of each committee report and of each recommended bill and resolution.

Respectfully submitted,

Representative Chet Pollert  
Chairman  
North Dakota Legislative Management

CP/JJB

# **HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL**

## **HISTORY OF THE LEGISLATIVE COUNCIL**

The North Dakota Legislative Council was created in 1945 as the Legislative Research Committee (LRC). The Legislative Research Committee had a slow beginning during the 1<sup>st</sup> interim of its existence because, as reported in the first biennial report, the prevailing war conditions prevented the employment of a research director until April 1946.

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 legislative session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-54 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

## **NAME CHANGES**

The name of the LRC was changed to the Legislative Council in 1969 to more accurately reflect the scope of its duties. Since 2009, Legislative Council refers specifically to the staff functioning as the legislative service agency, while Legislative Management refers to the oversight committee of legislators. Although research remains an integral part of the functioning of the Legislative Council, it has become a comprehensive nonpartisan legislative service agency with various duties in addition to research.

## **THE NEED FOR A LEGISLATIVE SERVICE AGENCY**

Nearly all states have a legislative service agency. These agencies vary in staff size and functional responsibilities. Legislative service agencies provide legislators with the tools and resources essential to fulfill the demands placed upon them. Prior to the creation of a legislative service agency, the Legislative Assembly had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

To meet these demands, the Legislative Assembly established the North Dakota Legislative Council. The existence of the Legislative Council has made it possible for the Legislative Assembly to meet the demands of today while remaining a part-time citizen legislature that meets for a limited number of days every other year.

## **LEGISLATIVE MANAGEMENT COMPOSITION**

In 2009 the Legislative Assembly changed the name of the oversight committee for the Legislative Council to the Legislative Management. This committee by statute consists of 17 legislators, including the Majority and Minority Leaders of both houses, the Speaker of the House, and six senators and six representatives. The Majority Leader and the Minority Leader in each house appoints members in proportion to the number of members in each party in each house. The minority party in each house is entitled to at least two members on the Legislative Management.

The Legislative Management is served by the Legislative Council staff of attorneys, accountants, and administrative support personnel who are hired and who serve on a strictly nonpartisan basis.

## **FUNCTIONS AND METHODS OF OPERATION OF THE LEGISLATIVE MANAGEMENT**

Although the Legislative Management has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the work results from studies contained in resolutions and bills passed by both houses. The usual procedure is for the Legislative Management to designate interim committees to carry out the studies, although a few committees, including the Administrative Rules Committee, Employee Benefits Programs Committee, Energy Development and Transmission Committee, Information Technology Committee, Legislative Audit and Fiscal Review Committee, Tribal and State Relations Committee, Water Topics Overview Committee, and Workers' Compensation Review Committee are statutory committees with duties imposed by state law.

Regardless of the source of authority of interim committees, the Legislative Management appoints the members with the exception of a few members appointed as provided by statute. Nearly all committees consist entirely of legislators, although a few citizen members sometimes are selected to serve when it is determined the citizen members can provide special expertise or insight for a study, or if directed by the statute or bill.

The Legislative Management committees hold meetings throughout the interim at which members hear testimony; review information and materials provided by staff, other state agencies, and interested persons and organizations; and consider alternatives. Occasionally it is necessary for the Legislative Management to contract with consulting firms, universities, or outside professionals on specialized studies and projects. However, the vast majority of studies are handled entirely by the Legislative Council staff.

Committees make reports to the full Legislative Management in November preceding a regular legislative session. All current legislators are invited to attend the November meeting as are newly elected legislators. The Legislative Management may accept, amend, or reject a committee's report. The Legislative Management presents the recommendations it has accepted, together with bills and resolutions necessary to implement them, to the Legislative Assembly.

In addition to conducting studies, the Legislative Council staff provides a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters and bill drafts to legislators and legislative committees. The Legislative Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Legislative Council reviews state agency rules and rulemaking procedures, legislative proposals affecting health and retirement programs for public employees, and information technology management of state agencies. The Legislative Council has on its staff the Legislative Budget Analyst and Auditor and a fiscal staff who provide technical assistance to Legislative Management committees and legislators, review audit reports for the Legislative Audit and Fiscal Review Committee, provide budget analysis, and assist the Legislative Assembly in developing the state's biennial budget. The Legislative Council provides information technology services to the legislative branch, including legislative publishing, bill drafting capabilities, and video recording of floor sessions. The Legislative Council makes arrangements for legislative sessions and controls the use of the legislative chambers and use of space in the legislative wing of the State Capitol. The Legislative Council also maintains a wide variety of materials and reference documents, many of which are not available from other sources.

### **MAJOR PAST PROJECTS OF THE LEGISLATIVE COUNCIL**

Nearly every facet of state government and statutes has been touched by one or more Legislative Management studies since 1945. Statutory revisions, including the rewriting of agriculture laws, criminal laws, election laws, game and fish laws, insurance laws, motor vehicle laws, school laws, and weapons laws have been among the major accomplishments of interim committees. Another project was the republication of the North Dakota Revised Code of 1943, the resulting product being the North Dakota Century Code.

Government reorganization also has occupied a considerable amount of attention. Included have been studies of the delivery of human services, agriculturally related functions of state government, the creation of the Information Technology Department and the cabinet-level position of chief information officer, the creation of the Department of Commerce, organization of the state's higher education system, and the creation of the Commission on Legal Counsel for Indigents, as well as studies of the feasibility of consolidating functions in state government. Unification of the state's judicial system and the establishment of a public venture capital corporation also were subjects of studies.

The review and updating of uniform and model acts, such as the Uniform Probate Code and the Uniform Commercial Code, also have been included in past Legislative Management agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures that have been approved by the voters.

Pioneering in new and untried areas is one major function of interim committees. The regulation and taxation of natural resources, including oil and gas in the 1950s and coal in the 1970s, have been the highlights of several interim studies. The closing of the constitutional institution of higher education at Ellendale also fell upon an interim committee after a fire destroyed one of the major buildings on that campus. The expansion of the University of North Dakota School of Medicine and Health Sciences is another area that has been the subject of several interim studies.

The Legislative Management has permitted the legislative branch to be on the cutting edge of technological innovation. North Dakota was one of the first states to have a computerized bill status system in 1969 and, beginning in 1989, the Legislator's Automated Work Station system has allowed legislators to access legislative documents at their desks in the House and Senate. All legislators receive laptop computers and an iPad to assist them in performing their legislative duties. During the 2009-10 interim, the Legislative Council staff worked with a consultant and the Information Technology Department to develop LEGEND, an updated legislative enterprise system that replaced the mainframe system. The new system is server-based and provides for enhanced bill drafting and session processing. Improvements to LEGEND have been made in the interims since its implementation, including a web-based application. Since 1997, the Legislative Management has had the responsibility to study emerging technology and evaluate its impact on the state's system of information technology.

Perhaps of most value to citizen legislators are committees that permit legislators to keep up with rapidly changing developments in complex fields. Among these is the Budget Section, which receives the executive budget in December prior to each legislative session. The Administrative Rules Committee allows legislators to monitor executive branch department rules. Other subjects regularly studied include school finance, health care, property and oil taxes, and higher education.



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# SUMMARY

## BRIEFLY - THIS REPORT SAYS

### ADMINISTRATIVE RULES

It is the standing duty of the Legislative Management to review administrative rules adopted by administrative agencies. The Legislative Management reviewed all state administrative rulemaking actions from January 2019 through October 2020, covering 2,285 pages of rules and 1,950 rules sections. Both the number of sections reviewed and the number of pages of rules were lower than the comparable amount from the previous biennial period, primarily due to extensive rules adopted by the Department of Environmental Quality in 2018. The Legislative Management reviewed the rules of the Office of Management and Budget, Agriculture Commissioner, Attorney General, Department of Financial Institutions, Game and Fish Department, State Department of Health, Department of Environmental Quality, Highway Patrol, Industrial Commission, Insurance Commissioner, State Personnel Board, Superintendent of Public Instruction, Public Service Commission, Retirement Board, Secretary of State, Department of Human Services, Board of University and School Lands, Workforce Safety and Insurance, and Department of Commerce as well as numerous licensing boards.

### AGRICULTURE AND TRANSPORTATION

The Legislative Management studied how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender.

The Legislative Management studied agricultural issues in the state, including grain buyers, roving grain buyers, grain brokers, and grain handling facilities under North Dakota Century Code Title 60, and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study directive required a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process, including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study directive also required a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under Title 60, and grain handling facility bonding requirements.

The Legislative Management studied current methods, using the electric vehicle infrastructure coalition, led by the Department of Transportation, to collaborate with the North Dakota utility industry, and North Dakota electric vehicle stakeholder groups, to design a jointly owned public and private network of electric vehicle infrastructure to support both commercial and noncommercial vehicles and to make recommendations regarding electric vehicle charging infrastructure. The study directive required an evaluation of the relative costs and benefits associated with various options for electric vehicle infrastructure support and estimate the future annual economic impact.

The Legislative Management studied the feasibility and desirability of creating a road train pilot program. The study directive required consultation with the Department of Transportation, Highway Patrol, Agriculture Commissioner, Industrial Commission, Department of Commerce, the Upper Great Plains Transportation Institute, and the Governor. The study directive also required an assessment of the federal regulations impacting road train operations, the economic impact of permitting road train operations in the state, and the costs associated with implementing a road train pilot program. The study directive permitted the Legislative Council to contract for consulting services to assist the Legislative Management in conducting the study.

The Legislative Management recommends [House Bill No. 1026](#) relating to changes to Title 60 as recommended by the Department of Agriculture and the North Dakota Grain Dealers Association.

The Legislative Management recommends [Senate Bill No. 2026](#) relating to the governor's authority to exceed size and weight limitations on motor vehicles for the operation of road trains.

The Legislative Management recommends [Senate Bill No. 2027](#) relating to the repeal of transportation network company reporting requirements.

The Legislative Management recommends [House Concurrent Resolution No. 3001](#) relating to urging Congress to temporarily amend cargo carrying truck length and weight restrictions on state highways and interstates that are a part of the National Network to allow North Dakota and surrounding states to conduct a road train pilot program and to permanently amend the restrictions to allow road trains on the National Network highways and interstates if the pilot program is successful.



The Legislative Management received reports from the Department of Transportation regarding information collected from transportation network companies during each biennium; the Advisory Committee on Sustainable Agriculture regarding the status of the committee's activities; the Federal Environmental Law Impact Review Committee regarding a required biennial report; the State Board of Agricultural Research and Education regarding the board's annual evaluation of research activities and expenditures; the Department of Environmental Quality regarding all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the 1<sup>st</sup> full year of the 2019-21 biennium; and the Department of Transportation regarding the department's study of public transportation services within the state.

## **BUDGET SECTION**

The Legislative Management received reports from the Office of Management and Budget on the status of the general fund, irregularities in the fiscal practices of the state, tobacco settlement proceeds, federal grant applications, the voluntary separation incentive program, the revised revenue forecast, and higher education project variance reports.

The Legislative Management authorized the expenditure of additional other funds for an outdoor track project at North Dakota State University and to increase the project authorization of the Dickinson State University Pulver Hall project. The Legislative Management also authorized the Highway Patrol to use up to \$80,000 from the preliminary planning revolving fund for prepayment of planning fees for a new public safety facility.

The Legislative Management received reports from the North Dakota University System regarding local funds; the State Board of Agricultural Research and Education on the status of its activities and full-time equivalent position adjustments; the Adjutant General on the National Guard service member, veteran, family, and survivor support program; the Department of Commerce on renaissance fund organizations annual audits; the Department of Human Services on transfers in excess of \$50,000; the Housing Finance Agency regarding the housing incentive fund; the Department of Agriculture on the emergency hay transportation assistance program; the Department of Transportation regarding driver's license sites; the State Water Commission regarding the Red River Valley Water Supply Project; the Governor's office regarding other funds received by the office; and Valley City State University regarding the integrated carbon capture project.

The Legislative Management received reports from the Department of Trust Lands regarding state agency unclaimed property and investment performance of funds, Job Service North Dakota regarding the status of the job insurance trust fund, the Legacy and Budget Stabilization Fund Advisory Board regarding its activities, the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years, the Department of Corrections and Rehabilitation regarding its inmate report, hub city reports regarding the use of funding received from allocations from oil and gas gross production tax, the Industrial Commission regarding the abandoned oil and gas well plugging and site reclamation fund and actions with a fiscal impact greater than \$20 million, the North Dakota Outdoor Heritage Advisory Board regarding its activities, the State Fire Marshal regarding expenditures by certified fire departments, and the Three Affiliated Tribes of the Fort Berthold Reservation regarding investment of oil and gas tax receipts.

The Legislative Management approved 62 requests for increased agency spending authority and transfers of spending authority which were forwarded from the Emergency Commission. Included in the requests was the allocation of \$1.25 billion of federal coronavirus relief funds.

The Legislative Management recommends [Senate Concurrent Resolution No. 4001](#) to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds during the 2021-23 interim.

## **COMMERCE**

The Legislative Management studied the future administration and regulation of the unmanned aircraft systems industry in North Dakota, including beyond visual line of sight unmanned aircraft systems; the protections, enforcement, and remedies regarding the disclosure of consumers' personal data; the regulation of sewage treatment system installation, maintenance, testing, and repair; and the distribution of food to rural communities in the state and how the system can be improved.

The Legislative Management received reports from the Department of Commerce regarding the development of the beyond visual line of sight unmanned aircraft system program and the status of the unmanned aircraft systems test site and reports from the State Board of Higher Education regarding the skilled workforce student loan repayment program and skilled workforce scholarship program.

## DEPARTMENT OF CORRECTIONS AND REHABILITATION REVIEW

The Legislative Management studied:

- The Department of Corrections and Rehabilitation, including:

A review, with input from a consultant engaged by the Department of Corrections and Rehabilitation, of gender responsive correctional and rehabilitation facility and service needs.

An assessment of facilities at the Missouri River Correctional Center, the James River Correctional Center, and the State Hospital, with input from a consultant engaged by the Department of Corrections and Rehabilitation.

A review of vocational opportunities, educational opportunities, workforce development, and medical and behavioral health treatment for those committed to the care, custody, and control of the Department of Corrections and Rehabilitation.

- Best practices to reduce offender recidivism, increase educational opportunities, prepare incarcerated offenders to rejoin their communities, establish and implement a community transitional housing program, including independent host homes, and encourage communities to reintegrate previously incarcerated individuals into society.

The Legislative Management received a report from a consultant engaged by the Department of Corrections and Rehabilitation. The Legislative Management recommends the Department of Corrections and Rehabilitation and the Legislative Assembly support option 1 from the consultant for future capital project and operations requests, including the conversion of the Youth Correctional Center into a women's campus, maintenance of the Dakota Women's Correctional and Rehabilitation Center as a community corrections resource center, and renovations to provide for a total of 350 beds at the James River Correctional Center and 100 beds at the Missouri River Correctional Center for male inmates.

## EDUCATION FUNDING FORMULA REVIEW

The Legislative Management studied the K-12 education funding formula, including the components, adjustments, and weighting factors of the formula. The study of the K-12 education funding formula included a review of current state school aid funding levels and the status of state school aid, including the cost to continue state school aid in the 2021-23 biennium; school district hold harmless calculations, including minimum and maximum adjustments; excess ending fund balance deductions; and other local revenue deductions, including school district mill levies and in lieu of property tax revenue. The study also included information regarding the impact of the Coronavirus (COVID-19) pandemic on school district ending fund balances and federal funds provided to mitigate the impact of the COVID-19 pandemic on K-12 education. The Legislative Management recommends [House Bill No. 1028](#) to allow a school district to temporarily transfer excess funds, accruing as a result of the COVID-19 pandemic, between the general fund and the building fund of the school district.

The Legislative Management studied school transportation, including district routes, expenditures, reimbursements, and possible efficiencies. The study of school transportation included a review of the history of school transportation funding and reimbursement, transportation funding formulas repealed in 2003, current transportation reimbursement practices, transportation costs eligible for reimbursement, reimbursement rates and funding, demand for transportation services, and transportation challenges. The study also reviewed the results of a performance audit of transportation grant reimbursement by the Department of Public Instruction and the impact of the COVID-19 pandemic on school district transportation costs and reimbursement. The Legislative Management recommends [House Bill No. 1027](#) to codify student transportation aid payment sections as the provisions existed on June 30, 2001, update provisions to reflect current practices and reimbursement rates, and prohibit school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements.

The Legislative Management received reports from the Superintendent of Public Instruction regarding:

- The financial condition of schools, including information regarding mill levy rates, taxable valuation, revenues, expenditures, student enrollment, average daily membership, average cost per student, teachers, average salaries, and number of graduates; and
- School district employee compensation reported by school districts for school years ending in June of 2017, 2018, and 2019.

The Legislative Management also received reports from the Superintendent of Public Instruction regarding a study, assigned to the Department of Public Instruction, the Indian Affairs Commission, and the Kindergarten Through Grade Twelve Education Coordination Council, regarding the effect of impact aid on the funding formula of reservation schools; from the Department of Public Instruction regarding special education contract costs and challenges of the special

education contract system and student placement, federal Every Student Succeeds Act reports on per student expenditures by school district, the impact of funding made available to school districts through the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the impact of on-time funding factors on the state school aid formula, the impact of distance learning on school districts' ability to fulfill school calendar hour requirements and the impact of distance learning on school districts' state school aid calculation; and other reports from the Center for Distance Education, Department of Career and Technical Education, and other education stakeholders.

## **EDUCATION POLICY**

The Legislative Management studied dual-credit, advanced placement, and distance education courses. The study directive required a review of early enrollment placement testing and the qualifications for dual-credit and advanced placement courses and a review of the costs and amounts of funding necessary to provide all students access to dual-credit, advanced placement, and distance education courses, as well as the types of courses available and the delivery methods necessary to provide all students with access.

The Legislative Management studied the feasibility and desirability of creating a teacher incentive for leadership program. The study directive required an evaluation of whether a program would improve student learning through improved instruction; reward effective teachers by providing increased leadership opportunities; attract new teachers to the state by offering competitive starting salaries and professional development; promote collaboration and new career pathways for teachers through mentoring, coaching, and project-based learning; and retain effective teachers through new career opportunities and advancement. The study directive also required a review of the types of data to be tracked to determine the success of the program, the correlation and effectiveness of the program in relation to other teacher development programs, and how the program operates in relation to the statewide education strategic vision.

The Legislative Management studied provisions of the Century Code which relate to the provision of elementary and secondary education to recommend changes to any laws found to be irrelevant, duplicative, inconsistent, or unclear.

The Legislative Management studied the impact of students who experience behavioral health crisis or who engage in intense and aggressive behavior for communication purposes, both of which result in behaviors that make learning environments unsafe for other students, teachers, and other school personnel, and the need to implement a uniform reporting system.

The Legislative Management recommends [Senate Bill No. 2028](#) relating to the repeal of obsolete and redundant provisions in Title 15.1.

The Legislative Management received reports from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board and the alternative teacher certification program, including the number of teacher licenses issued under the program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The Legislative Management received reports from the Superintendent of Public Instruction regarding assessment data and the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide; requests from a school or school district for a waiver of any rule governing the accreditation of schools; waivers applications under Section 15.1-06-08.1; and the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results; updates and the collaborative report on the statewide prekindergarten through grade twelve education strategic vision; and proposed changes to the state accountability plan. The Legislative Management also received a report from the Kindergarten Through Grade Twelve Education Coordination Council regarding the activities of the council.

## **EMPLOYEE BENEFITS PROGRAMS**

The Legislative Management studied the feasibility and desirability of the Public Employees Retirement System entering a separate contract for prescription drug coverage under the uniform group insurance plan. The Legislative Management recommends [House Bill No. 1029](#) to provide the Public Employees Retirement System flexibility to purchase stop-loss insurance for self-insurance pharmacy benefits.

The Legislative Management solicited and reviewed multiple proposals affecting retirement and health programs for public employees and obtained actuarial and fiscal information on each of these proposals. The Legislative Management received and reviewed the annual actuarial reports for the Teachers' Fund for Retirement and the Public Employees Retirement System. The Legislative Management approved terminology adopted by the Board of Trustees of the Teachers' Fund for Retirement and adopted by the Public Employees Retirement System Board to comply with federal requirements. The Legislative Management received periodic reports from the Human Resource Management Services Division of the Office of Management and Budget on the implementation, progress, and bonuses provided by state agency programs to recruit or maintain employees in hard-to-fill positions. The Legislative Management received a report

from Human Resource Management Services on service awards, employer-paid cost of training or educational courses, and employer-paid professional organization membership and service club dues for individuals.

## **ENERGY DEVELOPMENT AND TRANSMISSION**

The Legislative Management studied the impact of a comprehensive energy policy for the state pursuant to its statutory responsibility. The Legislative Management received reports regarding the Energy Policy Commission's policy recommendations, the North Dakota Transmission Authority's activities, the North Dakota Pipeline Authority's activities, the State Energy Research Center's research activities and accomplishments, a status and final report of the Industrial Commission's study on recycling produced water in oil and gas operations, the Energy and Environmental Research Center's results and recommendations of the underground gas storage pilot project, and the High-Level Radioactive Waste Advisory Council's findings.

## **GOVERNMENT ADMINISTRATION**

The Legislative Management studied consolidated emergency and interoperable public safety communications system governance and funding options. The Legislative Management recommends emergency and interoperable public safety communications system governance not be modified from the current governance model until the statewide interoperable radio network project is complete and providing statewide interoperability for public safety communications, at which time additional analysis of governance consolidation may be necessary.

The Legislative Management studied accessibility of the State Capitol grounds as related to the federal Americans with Disabilities Act of 1990. The Legislative Management recommends [House Bill No. 1030](#) to provide an appropriation of \$750,000 from the Capitol building fund to the Office of Management and Budget, of which \$460,950 is for costs associated with the implementation of changes to the State Capitol grounds for compliance with the Americans with Disabilities Act of 1990 and \$289,050 is for additional costs to improve accessibility of the State Capitol during the 2021-23 biennium. The bill draft requires the Office of Management and Budget to consult with the Legislative Management when considering changes to legislative branch areas and with the Chief Justice when considering changes to judicial branch areas.

The Legislative Management studied the feasibility and desirability of developing other allowable revenue generating uses of the Veterans' Home facilities and grounds in addition to the purposes identified in Section 37 15 02. The Legislative Management discussed delaying any changes to the basic care and skilled care areas of the Veterans' Home until additional information is available regarding the number of Vietnam War veterans who may apply for residency at the Veterans' Home. The Legislative Management discussed the importance of reviewing the strategic plan being prepared by Eide Bailly, LLP when it is available, before making any revenue generating changes at the Veterans' Home.

The Legislative Management studied state and federal veterans' programs, including program eligibility requirements. The Legislative Management makes no recommendation regarding this study.

## **GOVERNMENT FINANCE**

The Legislative Management studied, in coordination with the State Auditor, the provisions of the Century Code relating to state agency fees. The Legislative Management recommends [House Bill No. 1031](#) to require the Legislative Management to study state agency fees on an ongoing basis.

The Legislative Management studied the feasibility and desirability of reducing Lewis and Clark Interpretive Center fees and consider alternatives to address the sustainability of the Parks and Recreation Department's operations of the Lewis and Clark Interpretive Center.

The Legislative Management studied public access and use of real property located between the Missouri River and the Missouri River Correctional Center, owned by the State of North Dakota, under the control of the Department of Corrections and Rehabilitation, and the impact of transferring the property to the Parks and Recreation Department. The Legislative Management recommends [House Concurrent Resolution No. 3002](#) recognizing the memorandum of understanding and option to acquire land, upon approval of the Legislative Assembly, entered by the Department of Corrections and Rehabilitation and the Parks and Recreation Department relating to the Missouri River Correctional Center land.

The Legislative Management reviewed state budget information, including monitoring the status of revenues and appropriations.

The Legislative Management received the following reports:

- The Department of Environmental Quality's plan for boiler inspection fees to meet program expenses.

- The Department of Environmental Quality's petroleum tank release program and why fees cover only 50 percent of the cost of the program.
- An update on oil and gas activity in the state from the Department of Mineral Resources.
- Legislative Council staff reports relating to:
  - Ongoing general fund revenues and appropriations and the projected ongoing revenue shortfall for the 2021-23 biennium general fund budget;
  - Oil and gas tax revenues; and
  - 2019-21 agency compliance with legislative intent.

## **HEALTH CARE**

The Legislative Management studied ways the state may be able to positively affect the current trend of health insurance premium rates increasing; the feasibility and desirability of state guaranteed issue provisions for health insurance; the delivery of health insurance in the state; and the State Department of Health licensing process for health facility construction and renovation projects.

The Legislative Management recommends [House Bill No. 1032](#) directing the State Board of Pharmacy to collect and the Insurance Department to publish data regarding prescription drug costs; [House Bill No. 1033](#) requiring notice within 2 business days if a pharmacist substitutes an interchangeable biosimilar for the reference biologic and clarifying how notice may be provided by electronic means; and [Senate Bill No. 2029](#) providing for guaranteed issue for small employer health insurance plans and individual health insurance plans, providing limited pre-existing condition provisions in cases of lapse of coverage.

## **HIGHER EDUCATION**

The Legislative Management studied higher education institutions under the control of the State Board of Higher Education, including higher education trends, research, facilities, and the role of higher education in meeting the state's workforce needs. The Legislative Management recommends:

- [Senate Bill No. 2030](#) to continue the higher education challenge grant program at its current funding level with an appropriation of \$9.65 million from the general fund.
- [Senate Bill No. 2031](#) to amend the higher education funding formula to:
  - Increase funding for credits completed in career and technical education;
  - Modify the credit completion factor to protect institutions with increasing enrollment from a reduction in funding caused by a decrease in the credit completion factor;
  - Restore the minimum amount payable clause at 96 percent;
  - Eliminate the funding formula reduction attributable to the law enforcement tuition waiver;
  - Eliminate the institutional size factor;
  - Direct the State Board of Higher Education to conduct an instructional program cost analysis during the 2021-22 interim using 2019-21 biennium financial data;
  - Provide legislative intent that the State Board of Higher Education transfer computer science credits from the core disciplines cluster to the engineering discipline cluster;
  - Provide legislative intent that the State Board of Higher Education not recognize the change in the CIP code to move certain veterinary-related courses from the health sciences cluster to the agriculture cluster; and
  - Provide legislative intent that the State Board of Higher Education place certain unique, high-cost career and technical education courses in an upper division created under the career and technical education discipline cluster.
- [Senate Bill No. 2032](#) to amend the higher education funding formula to provide for a reduced base funding amount for upper division non-career and technical education credits completed at 2-year institutions and an increased base funding amount for career and technical education credits completed at 4-year regional institutions.
- [Senate Bill No. 2033](#) to establish the capital building fund program in the Century Code with no funding limitation on deferred maintenance and extraordinary repairs projects. The bill draft also creates a capital building fund under the control of the State Board of Higher Education, provides specific carryover authority for capital building fund money, and authorizes the use of capital building funds for certain capital projects.

The Legislative Management received reports from the Legislative Management's interim Higher Education Funding Formula Review Committee regarding the committee's study of the higher education funding formula and the capital building fund program; from the University of North Dakota School of Medicine and Health Sciences regarding the strategic plans, programs, and facilities of the School of Medicine and Health Sciences; and from the University System regarding grants to tribally controlled community colleges under Chapter 15-70. The Legislative Management also received reports from the State Board of Higher Education regarding North Dakota academic and career and technical education scholarships; the transfer of appropriation authority among the operations, capital assets, and capital building fund line items by institutions under the control of the board; and the use of funding in each institutions' capital building fund line item, the source of matching funds, and each institutions' 5-year plan for capital construction spending.

## **HUMAN SERVICES**

The Legislative Management studied the Olmstead Commission.

The Legislative Management studied the implementation of recommendations included in the Human Services Research Institute's report on the state's behavioral health system.

The Legislative Management received reports regarding the Autism Spectrum Disorder Task Force, autism spectrum disorder voucher program pilot project, developmental disabilities system reimbursement project, Medicaid Expansion provider rates, tribal health care coordination fund, children's health insurance program, system of services and provider capacity for individuals with a disability, statewide acute psychiatric and residential care needs, nursing facility payment methodology, permanent housing support grants, and county social and human service programs.

## **INFORMATION TECHNOLOGY**

The Legislative Management received reports from the chief information officer and representatives of the Information Technology Department regarding information technology unification, blockchain, use of COVID-19 pandemic federal relief funding, the department's business plan and annual report, large information technology projects, prioritization of computer software projects for the 2021-23 biennium, the statewide interoperable radio network project, elementary and secondary information technology initiatives, bonuses provided to department employees, department employees working out of state, health information technology initiatives, and the statewide longitudinal data system. The Legislative Management also received reports from representatives of the University System regarding higher education information technology projects and services.

The Legislative Management studied the Information Technology Department's run-grow-transform model and the information technology unification initiative. Information was received from 12 agencies regarding the 2019-21 biennium information technology unification initiative pilot project and potential future unification initiatives. The Legislative Management recommends the Legislative Assembly continue the 2019-21 biennium information technology unification pilot project and continue evaluating the advantages and disadvantages of potential future information technology unification initiatives.

The Legislative Management studied the potential benefit value of blockchain technology implementation and utilization in state government. The Legislative Management makes no recommendations regarding this study.

The Legislative Management received information from representatives of the Information Technology Department regarding the department's cybersecurity initiatives, representatives of the Risk Management Division of the Office of Management and Budget regarding proposed legislation related to limiting contractual liability to the state when potential direct loss is unknown, and representatives of the Emergency Services Communications Coordinating Committee regarding proposed legislation related to emergency services communications terminology updates. The Legislative Management recommends the 2021 Legislative Assembly favorably consider legislation that may be introduced regarding:

- Executive branch agencies and political subdivisions being required to report cybersecurity incidents to the Information Technology Department;
- Contracts limiting liability to the state; and
- Updating terminology related to emergency services communications.

The Legislative Management received information from the Information Technology Department regarding the department's efforts to transition state applications from mainframe technology. The Legislative Management encourages the department to transition all state agency applications off the primary IBM mainframe by the end of the 2025-27 biennium.

## JUDICIARY

The Legislative Management studied the potential adoption of an initiated measure allowing the use of recreational marijuana, including the benefits and detriments of legalizing recreational marijuana.

The Legislative Management studied the state's civil commitment laws and procedures under Chapters 25-03.1 and 35-03.2 and the behavioral health and civil justice systems to determine whether steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill. The Legislative Management recommends [House Bill No. 1034](#) relating to preliminary treatment and involuntary hearings.

The Legislative Management studied the state's charitable gaming laws, including an evaluation of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters; an evaluation regarding the appropriate limitations, restrictions, and oversight if new games are added; an evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and a review of whether the laws regarding eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate.

The Legislative Management studied the implementation and requirements of Article XIV of the Constitution of North Dakota, concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the Legislative Assembly and the North Dakota Ethics Commission, and potential issues under the United States Constitution and the Constitution of North Dakota. The Legislative Management recommends [Senate Bill No. 2034](#) authorizing the Ethics Commission to provide written advisory opinions upon the request of a public official, candidate for elected office, or lobbyist.

The Legislative Management studied the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process. The Legislative Management recommends [House Bill No. 1035](#) relating to a reorganization of the Uniform Juvenile Court Act and an inclusion of the best practices in use by the Juvenile Court and [House Bill No. 1036](#) relating to a continued study of the juvenile justice system, including a review of the effective intervention, resources, and services for children.

The Legislative Management reviewed uniform Acts recommended by the Commission on Uniform State Laws.

The Legislative Management recommends [Senate Bill No. 2035](#) to make technical corrections throughout the Century Code.

The Legislative Management received a report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices; a biennial report from the North Dakota Racing Commission addressing the issue of lack of revenue to the general and special funds; a report from the North Dakota Lottery regarding the operation of the lottery; a report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services; reports from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program and a report relating to civil asset forfeiture cases in the preceding fiscal year; a report from the Task Force on the Prevention of Sexual Abuse of Children with recommendations for state policy relating to data collection; a report from the State Department of Health relating to the implementation of the medical marijuana program; and a report from the juvenile justice commission, including policy recommendations to update the Uniform Juvenile Court Act.

## LEGACY FUND EARNINGS

The Legislative Management studied the history and status of the legacy fund and the potential uses of legacy fund earnings. The Legislative Management received information on the state budget, other sovereign wealth funds, including the Alaska permanent fund, and the potential concerns for the current process of administering the legacy fund earnings. The Legislative Management also received comments regarding proposed uses of legacy fund earnings.

The Legislative Management recommends:

- [House Bill No. 1037](#) relating to the establishment of a percent of market value method for determining the amount of legacy fund earnings available to be spent each biennium and the creation of a legacy earnings fund.
- [House Bill No. 1038](#) relating to a legacy fund earnings committee.

## **LEGISLATIVE AUDIT AND FISCAL REVIEW**

The Legislative Management received and accepted 155 audit reports from the State Auditor's office and public accounting firms. Among the audit reports accepted, 6 were performance audits and evaluations, including State of North Dakota special funds, University System open educational resources, University System online education, University System nonresident tuition, Dakota College at Bottineau emergency preparedness, and North Dakota State College of Science Division of Workforce Affairs.

The Legislative Management received the State Auditor's external peer review report conducted by the National State Auditors Association for the period April 1, 2019, through March 31, 2020.

The Legislative Management received information regarding State Auditor fees and the impact to state agencies and other public entities.

The Legislative Management received information from the State Auditor that pursuant to Section 44 08 05.1, the State Auditor's office forwarded the Department of Commerce audit for the fiscal years ending June 30, 2019 and 2018, and the State Library audit for the fiscal years ending June 30, 2019 and 2018, to the Attorney General due to possible law violations identified in the audit report and the North Dakota State College of Science Division of Workforce Affairs performance audit dated March 26, 2019, to the Cass County State's Attorney due to possible law violations identified in the audit report. Later in the interim, Legislative Management was informed by the Attorney General's office investigations were conducted relating to the findings identified in each of the audit reports and the investigations resulted in no criminal charges being filed for any of the individuals involved.

## **LEGISLATIVE PROCEDURE AND ARRANGEMENTS**

The Legislative Management approved arrangements for the 2021 legislative session. In preparation for a legislative session during the COVID-19 pandemic, the Legislative Management recommended amending House Rule 329, Senate Rule 329, and Joint Rules 501 and 502 to remove requirements for fiscal notes to be attached physically to bill drafts or distributed in hard copy, and amending House Rules 102, 201, 303, 305, 321, 360, and 361; Senate Rules 102, 201, 303, 305, 321, 360, and 361; and Joint Rule 801 to permit remote participation by members of the Legislative Assembly in floor sessions and committee meetings, remote testimony in committee hearings, and limitations on the number of individuals allowed in the chambers.

The Legislative Management also recommended adjustments in legislative compensation for the 2021-23 biennium, amending House Rule 362 and Senate Rule 362 to update the references to technology in the rules and prohibit individuals other than members of the media from making calls and recording and transmitting audio or video from the chamber floors and committee rooms, and amending Senate Rules 320 and 348 and House Rule 348 to clarify when a roll call vote is required for a motion for reconsideration.

The Legislative Management recommended a concurrent resolution establishing legislative employee positions. The Legislative Management also addressed changes in staffing, contracting, and employee duties resulting from increased use of technology. The Legislative Management directed the Legislative Council to provide livestream video of committee meetings during the interim and to develop the capability to provide livestream video of floor sessions and committee hearings during legislative sessions.

The Legislative Management recommends [House Bill No. 1039](#) to give the North Dakota Newspaper Association and the North Dakota Broadcasters Association joint responsibility for the Capitol media room.

## **LEGISLATIVE REVENUE ADVISORY**

The Legislative Management studied state revenues and state revenue forecasts and reviewed information regarding the revenue forecasting process and recent revenue forecast adjustments. The Legislative Management received a report from IHS Markit regarding economic forecasting data, including a 2019-21 biennium revised general fund revenue forecast and a 2021-23 biennium preliminary general fund revenue forecast. The Legislative Management also received information from state agencies and industry representatives regarding current economic conditions in the state.

## **NATURAL RESOURCES**

The Legislative Management studied access to public and private lands for hunting, trapping, fishing, and related issues, including trespass violations and penalties, and the ability to form a land access database with electronic posting capabilities. The Legislative Management directed the Information Technology Department and the Game and Fish Department to establish an electronic posting pilot project for up to three counties. Richland, Ramsey, and Slope Counties were selected for the pilot project, and the Information Technology Department and Game and Fish Department developed an online database for electronic posting of land in those three counties. The pilot project was operational for the 2020-21 hunting season. The Legislative Management recommends [Senate Bill No. 2036](#) to continue the study of



land access and related issues, [Senate Bill No. 2037](#) to allow landowners to physically or electronically post land and to include all fenced land in the criminal trespass statute, and [Senate Bill No. 2038](#) to allow landowners the option of either physically or electronically posting land.

## **TAXATION**

The Legislative Management studied the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices; whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate; and options for replacing revenue generated by special assessments with revenue from an alternative local funding source. The Legislative Management also studied economic development tax incentives pursuant to its statutory responsibility.

The Legislative Management received three reports from the Tax Commissioner, including reports compiling reports from counties and school districts receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended and a report on statewide property tax increases.

The Legislative Management also received three reports from the Department of Commerce, including a report on renaissance zone progress, a report pertaining to cities that have renaissance zone property included in a tax increment financing district, and a report compiling and summarizing annual state grantor reports and reports of state agencies that awarded business incentives for the previous calendar year.

## **TRIBAL TAXATION ISSUES**

The Legislative Management studied tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, the procedure for withdrawal from an agreement and how to handle disputed funds, and methods for sourcing revenue generated from wells located inside or outside of the external boundaries of a reservation in this state when a horizontal lateral enters a spacing unit that is located both inside and outside of the external boundaries of a reservation in this state.

The Legislative Management also studied gaming; tribal health care funding; infrastructure and law enforcement issues, including infrastructure needs and law enforcement shortages; and additional issues affecting the tribes, including the impact of COVID-19, the federal census, and oil spill concerns.

The Legislative Management received a report from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court.

## **WATER TOPICS OVERVIEW**

The Legislative Management provided a legislative overview of significant water projects and the State Water Commission's budget, spending, and operations. The Legislative Management also studied the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs. The Legislative Management received reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project. Although the Legislative Management was tasked with reporting the results of a pilot project regarding implementation of a basinwide water plan eligible for state funding through the State Water Commission, no eligible plan was submitted to the State Water Commission for approval during the interim. At the request of the State Water Commission, the Legislative Management provided recommendations regarding reductions in projects' funding due to reduced revenues available in the resources trust fund. The Legislative Management also held a joint meeting with the State Water Commission and discussed continued collaboration between the two entities.

## **WORKERS' COMPENSATION REVIEW**

The Legislative Management fulfilled its statutory duties and reviewed the workers' compensation case of twelve injured employees to determine whether changes should be made to the state's workers' compensation laws. The Legislative Management recommends [House Bill No. 1040](#) to extend the 30-day time frame allotted for injured employees and employers to appeal or request reconsideration of a decision by Workforce Safety and Insurance to 45 days and to remove the provision that the failure of an employer to file a response within 14 days from the day a response form was mailed to the employer constitutes the employer's admission the information in the claim form is correct.

The committee received annual reports from Workforce Safety and Insurance regarding compiled data relating to safety grants issued under Chapter 65-03, and current pilot programs and pilot programs completed within the previous 12 months. The committee received quarterly reports from the Office of Administrative Hearings and Workforce Safety and Insurance on statistical information regarding results under the case processing standards and policies.

# ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, 28-32-17, 28-32-18, and 28-32-18.1. The committee is required to review administrative agency rules to determine whether:

- Administrative agencies are properly implementing legislative purpose and intent.
- There is dissatisfaction with administrative rules or statutes relating to administrative rules.
- There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Management the amendment or repeal of the statutory authority for the rule. The committee also may find a rule void or agree with an agency to amend or repeal an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

The Legislative Management delegated to the committee its authority under NDCC Section 28-32-10 to distribute administrative agency notices of proposed rulemaking and to establish standard procedures for agency compliance with notice requirements, its authority under NDCC Section 28-32-07 to approve extensions of time for administrative agencies to adopt rules, and its responsibility under NDCC Section 28-32-42 to receive notice of appeal of an administrative agency's rulemaking action.

The committee is authorized under NDCC Sections 54-06-32 and 54-06-33 to approve rules adopted by Human Resource Management Services authorizing service awards and employer-paid costs of training to employees in the classified service.

Committee members were Representatives Bill Devlin (Chairman), Rick Becker, Josh Boschee, Kim Koppelman, Andrew Marschall, Brandy Pyle, Dan Ruby, Bernie Satrom, Vicky Steiner, Nathan Toman, and Robin Weisz and Senators Joan Heckaman, Jerry Klein, Randy D. Lemm, Nicole Poolman, and David S. Rust.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). A rule is an agency's statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law. Each rule adopted by an administrative agency must be filed with the Legislative Council office for publication in the North Dakota Administrative Code (NDAC).

Under NDCC Section 54-35-02.6, it is the standing duty of the Administrative Rules Committee to review administrative rules adopted under NDCC Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to address:

- Whether the rules resulted from statutory changes made by the Legislative Assembly.
- Whether the rules are related to any federal statute or regulation. If so, the agency is requested to indicate whether the rules are mandated by federal law or to explain any options the agency had in adopting the rules.
- A description of the rulemaking procedure followed in adopting the rules, e.g., the time and method of public notice and the extent of public hearings on the rules.
- Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to the rules. Each agency is asked to describe any such concern, objection, or complaint, and the response of the agency, including any change made in the rules to address the concern, objection, or complaint, and to summarize the comments of any person who offered comments at the public hearings on these rules.
- The approximate cost of giving public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
- The subject matter of the rules and the reasons for adopting the rules.

- Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rules are expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued. If a regulatory analysis was prepared, a copy is to be provided to the committee.
- Whether a regulatory analysis or small entity economic impact statement was prepared as required by NDCC Section 28-32-08.1. If a small entity impact assessment was prepared, a copy is to be provided to the committee.
- Whether the rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by the agency. Copies of any fiscal note are to be provided to the committee.
- Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a constitutional takings assessment was prepared, a copy is to be provided to the committee.
- If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency is to provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and a copy of the governor's approval of the emergency status of the rules.

During committee review of the rules, agency testimony is required and any interested party may submit oral or written comments. If no representative of the agency appears before the committee to provide testimony, the rules are required by statute to be carried over for consideration and may be delayed in taking effect until a representative of the agency appears before the committee.

### CURRENT RULEMAKING STATISTICS

The committee reviewed 1,950 rules sections and 2,285 pages of rules changed from January 2019 through October 2020. Both the number of sections reviewed and the number of pages of rules were substantially lower than the comparable amount from the previous biennial period, primarily due to extensive rules adopted in the previous biennial period by the Department of Environmental Quality. Table A at the end of this report shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of NDAC sections amended, repealed, created, superseded, reserved, or redesignated during designated time periods:

Time Period	Number of Sections
November 1986-October 1988	2,681
November 1988-October 1990	2,325
November 1990-October 1992	3,079
November 1992-October 1994	3,235
November 1994-October 1996	2,762
November 1996-October 1998	2,789
November 1998-November 2000	2,074
December 2000-November 2002	1,417
December 2002-November 2004	2,306
December 2004-October 2006	1,353
January 2007-October 2008	1,194
January 2009-October 2010	1,451
January 2011-October 2012	907
January 2013-October 2014	1,383
January 2015-October 2016	2,108
January 2017-October 2018	3,736
January 2019-October 2020	1,950

For committee review of rules at each meeting, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, with changes indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during designated time periods:

Time Period	Supplement Pages
November 1992-October 1994	3,809
November 1994-October 1996	3,140
November 1996-October 1998	4,123

<b>Time Period</b>	<b>Supplement Pages</b>
November 1998-November 2000	1,947
December 2000-November 2002	2,016
December 2002-November 2004	4,085
December 2004-October 2006	1,920
January 2007-October 2008	1,663
January 2009-October 2010	2,011
January 2011-October 2012	2,399
January 2013-October 2014	2,116
January 2015-October 2016	2,938
January 2017-October 2018	4,047
January 2019-October 2020	2,285

### **Rule Review Schedule**

Since September 2005, NDAC supplements have been published on a calendar quarter basis. The deadlines and effective dates are as follows:

<b>Filing Date</b>	<b>Committee Meeting Deadline</b>	<b>Effective Date</b>
August 2-November 1	December 15	January 1
November 2-February 1	March 15	April 1
February 2-May 1	June 15	July 1
May 2-August 1	September 15	October 1

## **COMMITTEE ACTION ON RULES REVIEWED**

### **Repealing Obsolete Rules**

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal notice and hearing requirements relating to adoption of administrative rules if the agency initiates the request to the committee, the agency provides notice to the regulated community of the time and place the committee will consider the request, and the agency and the Administrative Rules Committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community.

### **Voiding or Carrying Over Rules**

Under NDCC Section 28-32-18, the committee may void all or part of a rule if that rule is initially considered by the committee no later than the 15th day of the month before the date of the NDAC supplement in which the rule change appears. The committee may carry over consideration of voiding administrative rules for not more than one additional meeting. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to provide information or to work with affected groups to develop mutually satisfactory rules. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

- An absence of statutory authority;
- An emergency relating to public health, safety, or welfare;
- A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
- A conflict with state law;
- Arbitrariness and capriciousness; or
- A failure to make a written record of an agency's consideration of written and oral submissions respecting the rule under NDCC Section 28-32-11.

Within 3 business days after the committee finds a rule void, the Legislative Council office is required to provide written notice to the adopting agency and the chairman of the Legislative Management. Within 14 days after receipt of the notice, the agency may file a petition with the chairman of the Legislative Management for Legislative Management review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Management has not disapproved the finding of the committee, the rule is void.

Because the Legislative Assembly recognized there are constitutional questions about the Administrative Rules Committee voiding rules, an alternative amendment to NDCC Section 28-32-18 will take effect if the North Dakota Supreme Court rules the authority to void rules is unconstitutional. The alternative amendment is the same in all respects as the amendment allowing the committee to find rules void except under the alternative amendment the committee may not find a rule to be void but may suspend a rule or portion of a rule. The effect of a suspension is the rule becomes

ineffective temporarily and will become permanently ineffective unless it is ratified by both houses of the Legislative Assembly during the next legislative session. The amendment requires the agency seeking ratification of a suspended rule to introduce a bill for that purpose. The authority of the Legislative Management to reverse the decision of the committee also applies in the case of a suspension of a rule.

### **Obsolete Rules Repealed by Committee**

The committee approved a request from the State Department of Health for the repeal of administrative rules in NDAC Title 33 regarding environmental quality. Because all environmental quality-related duties of the State Department of Health were transferred to the Department of Environmental Quality on April 29, 2019, the environmental quality rules in NDAC Title 33 became obsolete.

The committee approved a request from the North Dakota Board of Medicine for the repeal of NDAC Section 50-02-11-02, which limited the time allowed to complete examination requirements. Testimony in support of the repeal indicated the section was in conflict with the standards in the Interstate Medical Licensing Compact. North Dakota joined the compact in 2019 following the passage of Senate Bill No. 2173 (2019).

The committee approved a request from the Public Service Commission for the repeal of NDAC Article 69-07 and the amendment of NDAC Chapter 69-01-01 to remove references to grain elevators and warehouses from the commission's rule. Senate Bill No. 2009 (2019) transferred the regulation of grain warehousemen, grain buyers, and hay buyers from the Public Service Commission to the Agriculture Commissioner. As a result of this legislation, these portions of the NDAC were obsolete and no longer in compliance with state law.

### **Rules Carried Over or Amended by Committee Approval**

The committee carried over consideration of rules of the Department of Environmental Quality to address concerns regarding NDAC Section 33-16-03.1-13(1) and whether the hearing process may be used for a permit that involves significant revisions to the facility's nutrient management plan. The committee and the Department of Environmental Quality, in consultation with the North Dakota Stockmen's Association and the North Dakota Livestock Alliance, agreed on amendments offered by the department to address the issue.

The committee carried over for consideration the rules of the Retirement Board to address concerns regarding the conditions under which a political subdivision may leave the Public Employees Retirement System plan. After receiving further information and clarification from the Retirement Board, the committee took no further action on the rules.

The committee carried over for consideration a rule of the North Dakota Board of Optometry relating to a requirement for an optometrist to assess a patient's drug monitoring program data every 12 months during the patient's treatment with a controlled substance. The North Dakota Board of Optometry testified because an optometrist's authority to prescribe drugs is limited to schedule III drugs, the language relating to accessing the data every 12 months was unnecessary and was removed from NDAC Section 56-02-07-01(1).

The committee carried over for consideration the rules of the State Electrical Board due to concerns regarding the board's regulation of the telecommunications industry and the adoption of certain national rules. The committee was informed the State Electrical Board and the telecommunications industry worked out their differences and no further action was necessary. The committee and the State Electrical Board agreed to amendments that delayed implementation of the 2020 National Electrical Code until January 1, 2021, amended the adoption of the 2020 National Electrical Code to exclude the requirement to install whole-house surge protection, clarified smoke detectors only are required in places currently required by the building codes, and withdrew changes to NDAC Section 24.1-06-01-40(3) dealing with additional carbon monoxide detectors.

The committee, as authorized by NDCC Section 28-32-18(3), approved requested amendments to the rules of the Department of Environmental Quality (NDAC Sections 33.1-15-14-06 and 33.1-15-15-01.2); Board of University and School Lands (NDAC Section 85-01-01-02); Industrial Commission (NDAC Sections 43-02-03-10, 43-02-13-13, and 43-02-03-51.1(1)(h)); Superintendent of Public Instruction (NDAC Section 67-11-22-02); Department of Human Services (NDAC Sections 75-03-14-03(8) and 75-03-41-09(3)); and Real Estate Appraiser Qualifications and Ethics Board (NDAC Sections 101-02-02-03(4), 101-02-02-05(3), and 101-02-02-05.1(3)).

### **Rules Voided by Committee**

The committee considered a motion to void a rule of the State Department of Health for failure to comply with express legislative intent. The rule related to the sale of low-acid, home-canned food products by cottage food producers. The motion to void the rule failed.

**TABLE A**

**Statistical Summary of Rulemaking  
January 2019 Through October 2020 - Supplements 371 Through 378**

<b>Title</b>	<b>Supplement No.</b>	<b>Agency</b>	<b>Amend</b>	<b>Create</b>	<b>Supersede</b>	<b>Repeal</b>	<b>Special</b>	<b>Reserved</b>	<b>Total</b>
3	375 - Jan 20	Accountancy, Board of	3	0	0	0	0	0	3
4	376 - Apr 20	Management and Budget, Office of	10	0	0	1	0	0	11
7	373 - Jul 19	Agriculture Commissioner	23	7	0	9	0	0	39
	377 - Jul 20		15	28	0	2	0	0	45
10	373 - Jul 19	Attorney General	20	0	0	0	0	0	20
	377 - Jul 20		1	0	0	0	0	0	1
	378 - Oct 20		3	0	0	0	0	0	3
13	371 - Jan 19	Department of Financial Institutions	18	10	0	9	0	0	37
14	377 - Jul 20	Barber Examiners, Board of	0	1	0	0	0	0	1
24.1	377 - Jul 20	State Electrical Board	14	6	0	0	0	24	44
30	378 - Oct 20	Game and Fish Department	20	0	0	3	0	0	23
33	374 - Oct 19	State Department of Health	20	2	0	0	0	0	22
	375 - Jan 20		0	5	0	0	0	0	5
	377 - Jul 20		3	0	0	0	0	0	3
33.1	371 - Jan 19	Department of Environmental Quality	3	0	0	0	0	0	3
	377 - Jul 20		126	183	0	14	0	0	323
38	373 - Jul 19	Highway Patrol	3	0	0	0	0	0	3
43	376 - Apr 20	Industrial Commission	38	0	0	0	0	0	38
	378 - Oct 20		24	72	0	0	0	0	96
45	374 - Oct 19	Insurance, Commissioner of	24	11	0	1	0	0	36
50	375 - Jan 20	North Dakota Board of Medicine	5	5	0	24	0	0	34
54	377 - Jul 20	Board of Nursing	16	1	0	1	0	0	18
56	375 - Jan 20	Optometry, Board of	8	4	0	0	0	0	12
	376 - Apr 20		1	0	0	0	0	0	1
59.5	376 - Apr 20	State Personnel Board	2	0	0	0	0	0	2
61	374 - Oct 19	State Board of Pharmacy	16	0	0	1	0	0	17
	376 - Apr 20		9	0	0	8	0	0	17
61.5	376 - Apr 20	North Dakota Board of Physical Therapy	18	0	0	0	0	0	18
62	376 - Apr 20	Plumbing, Board of	3	0	0	1	0	0	4
	378 - Oct 20	Podiatric Medicine, Board of	6	2	0	0	0	0	8
66	375 - Jan 20	Psychologist Examiners, Board of	16	1	0	1	0	0	18
67	373 - Jul 19	Public Instruction, Superintendent of	0	10	0	18	0	0	28
	375 - Jan 20		42	32	0	70	0	0	144
	376 - Apr 20		2	15	0	0	0	0	17
67.1	375 - Jan 20	Education Standards and Practices Board	1	0	0	0	0	0	1
	378 - Oct 20		38	3	0	1	0	0	42
69	373 - Jul 19	Public Service Commission	1	0	0	0	0	0	1
	377 - Jul 20		7	10	0	0	0	0	17
71	372 - Apr 19	Retirement Board	1	1	0	0	0	0	2
	376 - Apr 20		16	0	0	0	0	0	16
72	377 - Jul 20	Secretary of State	0	13	0	0	0	0	13
	378 - Oct 20		49	3	0	2	0	0	54
74	377 - Jul 20	Seed Commission	19	4	0	0	0	0	23
75	371 - Jan 19	Department of Human Services	39	2	0	3	0	0	44
	374 - Oct 19		13	80	0	85	0	0	178
	375 - Jan 20		29	52	0	21	0	0	102
	376 - Apr 20		31	16	0	2	0	0	49
	377 - Jul 20		93	9	0	4	0	0	106
	378 - Oct 20		2	4	0	0	0	0	6
85	371 - Jan 19	University and School Lands, Board of	0	32	0	0	0	0	32
	375 - Jan 20		2	82	0	0	0	0	84
92	376 - Apr 20	Workforce Safety and Insurance	36	4	0	0	0	0	40
96	376 - Apr 20	Board of Clinical Laboratory Practice	4	1	0	0	0	0	5
101	373 - Jul 19	Real Estate Appraiser Qualifications and Ethics Board	14	0	0	0	0	0	14
	378 - Oct 20		3	0	0	0	0	0	3
108	377 - Jul 20	Department of Commerce	16	0	0	4	0	0	20
114	376 - Apr 20	Medical Imaging and Radiation Therapy Board	3	1	0	0	0	0	4
<b>Total</b>			<b>929</b>	<b>712</b>	<b>0</b>	<b>285</b>	<b>0</b>	<b>24</b>	<b>1950</b>

# AGRICULTURE AND TRANSPORTATION COMMITTEE

The Agriculture and Transportation Committee was assigned four studies.

- Section 1 of House Bill No. 1220 (2019) directed a study, in coordination with the Secretary of State, of how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender.
- Section 1 of House Bill No. 1467 (2019) directed a study of agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under North Dakota Century Code Title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study directive included a review of the current law; industry practices; background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities; a review of any potential efficiencies that may exist; methods of maintaining financial security during the grain buying process, including consideration of facility operating capital to ensure adequate solvency during licensing; and the process of confidential financial and physical audits. The study directive also included a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under Title 60, and grain handling facility bonding requirements.
- Section 2 of Senate Bill No. 2061 (2019) directed a study of current methods using the electric vehicle infrastructure coalition led by the Department of Transportation (DOT) to collaborate with the North Dakota utility industry and North Dakota electric vehicle stakeholder groups to design a jointly owned public and private network of electric vehicle infrastructure to support both commercial and noncommercial vehicles, and to make recommendations regarding electric vehicle charging infrastructure. The study directive included an evaluation of the relative costs and benefits associated with various options for electric vehicle infrastructure support and an estimate of the future annual economic impact.
- Section 2 of Senate Bill No. 2176 (2019) directed a study of the feasibility and desirability of creating a road train pilot program. The study directive required consultation with DOT, the Highway Patrol, the Agriculture Commissioner, the Industrial Commission, the Department of Commerce, the Upper Great Plains Transportation Institute (UGPTI), and the Governor. The study directive also included an assessment of the federal regulations impacting road train operations, the economic impact of permitting road train operations in the state, and the costs associated with implementing a road train pilot program. The study directive permitted the Legislative Council to contract for consulting services to assist the Legislative Management in conducting the study.

The committee was directed to receive the following reports:

- A report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities.
- A report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures.
- A report from DOT regarding information collected from transportation network companies during each biennium.
- A report from DOT regarding its study of public transportation services within the state.
- A biennial report from the Federal Environmental Law Impact Review Committee.
- Reports from DOT, as requested, on the road train pilot program.
- A report from the Department of Environmental Quality (DEQ) on or before October 1, 2020, on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the 1<sup>st</sup> full year of the 2019-21 biennium.

Committee members were Representatives Dennis Johnson (Chairman), Tracy Boe, Mike Brandenburg, Jay Fisher, Craig Johnson, Dwight Kiefert, Dan Ruby, Kathy Skroch, Wayne A. Trottier, and Greg Westlind and Senators Jim Dotzenrod, Kathy Hogan, Oley Larsen, Randy D. Lemm, Larry Luick, Janne Myrdal, Terry M. Wanzek

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.



## **CENTRAL INDEXING SYSTEM**

Section 1 of House Bill No. 1220 directed, in coordination with the Secretary of State, a study of how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender.

### **Background**

House Bill No. 1220, as introduced, would have amended Section 35-31-03, which gives priority to an agricultural supplier's lien obtained under Chapter 35-31 over all other liens and encumbrances, except agricultural processor's liens, relating to crops and agricultural products covered by the supplier's lien. The bill also would have amended Section 35-31-03 to provide an exception whereby an agricultural supplier's lien of more than \$50,000 would have had to meet certain conditions to have priority over other liens and encumbrances, including an authenticated notification, sent by the supplier to the holder of a conflicting security interest of record within 20 days after the date the supplies were furnished or services performed, stating the supplier may acquire a lien over the crops, agricultural products, or livestock of the debtor in an amount exceeding \$50,000. The legislative history indicated support for a study of the issue because of concerns a supplier may lose priority if the supplier did not comply with the conditions as described in the bill. Testimony indicated a notification requirement to a lender when a supplier's lien is placed on a producer's crop would be beneficial so the lender is made aware of an additional loan being secured by the single crop and collateral of the producer, which has priority over the lender's original loan.

### **Lien Process**

Banks and other lenders often extend producers a line of credit as an operating loan for farming operations secured by the producer's crop. Issues arise if the line of credit is not used to pay for the current year's operating costs and the producer instead purchases operating needs on credit from an agricultural supplier, resulting in double financing of the crop. A supplier may place a lien on the producer's crop to secure the value of the supplies. After harvest, the producer sells the crop and the buyer writes checks to the bank and the agricultural supplier as payees. The originating lender may be placed in a position in which the originating lender assumed it supplied the majority of the capital for the producer to create the crop, only to learn an agricultural supplier also has a priority lien on the crop.

### **Agricultural Liens**

Three main areas of the Century Code govern agricultural liens and the central indexing system. Title 35 addresses liens, Title 41 addresses the Uniform Commercial Code (UCC), and Chapter 54-09 addresses the Secretary of State and the central indexing system. General statutory provisions applicable to all liens are located in Chapter 35-01, and provisions specific to agricultural supplier's liens are located in Chapter 35-31.

A lien is defined as a charge imposed upon specific property by which the property is made security for the performance of an act. Section 35-01-14 provides different liens upon the same property have priority based upon the time of creation. Under Section 35-31-03, an agricultural supplier's lien obtained under Chapter 35-31 takes priority over all other liens and encumbrances, except agricultural processor's liens authorized under Chapter 35-30, which relates to crops and agricultural products covered by the supplier's lien. A supplier has 120 days from the date of delivery of supplies to file a lien. A supplier's lien ensures a supplier is able to recoup costs, but only for the amount of the supplies furnished and only in the crop grown with the supplies. Section 35-31-02 codifies the procedure to obtain an agricultural supplier's lien and requires certain information to be filed in the central notice system. The Secretary of State is required to provide an electronic means to obtain a lien or gain protection under the central notice system.

### **Uniform Commercial Code**

In addition to Chapters 35-01 and 35-31, agricultural supplier's liens also must comply with certain UCC provisions located in Chapters 41-01 and 41-09. Section 41-09-40(7) requires a crop buyer, when issuing a check to a crop producer, to issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold. The subsection also codifies the information that must be included in the notice from a lienholder to a crop buyer.

### **Central Indexing System and Statutory Provisions**

The central indexing system is a computer system containing liens filed online with the Secretary of State's office. A statewide perfection of a loan may be obtained by completing the filing in the online central indexing system. Senate Bill No. 2450 (1985) established a central notice system for filing interests and liens on crops and livestock by secured parties and lienholders under Section 41-09-46. The bill required the Secretary of State to develop and implement a central notice system containing the information filed with the Secretary of State's office pursuant to requirements regarding the protection of the buyer of goods. The statutory provisions regarding agricultural supplier's liens, agricultural processor's liens, and the process to obtain a lien under Chapters 35-30 and 35-31 were enacted in 1987 to reflect the newly created central notice system. In 1991, Section 41-09-46 was amended to require the Secretary of State to develop and implement a computerized central notice system and required the system to contain the information filed with the Secretary of State regarding liens. House Bill No. 1105 (2001) repealed Chapter 41-09 and enacted a new Chapter 41-09. The contents of the repealed chapter were recreated as Sections 54-09-09, 54-09-10, and 54-09-11, relating to

the duties of the Secretary of State and the central indexing system. Section 54-09-09 requires the Secretary of State to maintain a computerized central indexing system containing the information filed pursuant to Title 35 regarding liens. Section 54-09-10 requires the Secretary of State to produce an electronic list for crops and livestock that contain the information filed pursuant to Chapter 41-09 and chapters in Title 35 regarding liens. Section 54-09-11 establishes the fees pursuant to the central indexing system.

## **Testimony and Committee Considerations**

### **Secretary of State**

The committee received testimony from a representative of the Secretary of State's office regarding an enhanced central indexing system in which email notification could be sent to lenders when a priority lien is filed in the system. According to the testimony, the current online central indexing system was implemented in 2016. Before 2016 the system was electronic, but the filings were submitted on paper and entered in the electronic database. Filings now entered in the central indexing system are recorded down to the millisecond to determine priority, and liens filed first receive priority over subsequent filings using the same collateral, except in situations under the law where a subsequent lien may take priority over a prior filed lien. The testimony indicated the Secretary of State is willing to make changes to the central indexing system if requested to do so by the Legislative Assembly and stakeholders. The testimony indicated for approximately \$70,000, the system can be enhanced to include a notification system for lenders when a debtor is using the same collateral for multiple loans.

### **North Dakota Bankers Association**

The committee received testimony from a representative of the North Dakota Bankers Association which indicated banking institutions are supportive of receiving notice through the central indexing system when another lienholder steps in front of the bank's interest.

### **North Dakota Grain Dealers Association**

The committee received testimony from a representative of the North Dakota Grain Dealers Association which indicated grain dealers would support an enhancement to the central indexing system to provide notice to originating lenders when a priority lien is filed in the system.

## **Conclusion**

The committee recommends the Secretary of State enhance the central indexing system to provide notice to an originating lender when a priority lien is filed in the system on the same collateral.

## **ELECTRIC VEHICLE INFRASTRUCTURE**

Section 2 of Senate Bill No. 2061 directed a study of electric vehicle infrastructure.

### **Legislative History**

Senate Bill No. 2061, as introduced, would have created an annual road use fee for electric and hybrid vehicles of \$248 per electric vehicle registered and \$71 per hybrid vehicle registered, in addition to all other fees required for annual motor vehicle registration. The Senate amended the bill to change the fee amounts collected, and to provide for a Legislative Management study. The House amended the bill to change the fee amounts collected and change definitions.

According to the testimony on the bill, 200,000 electric vehicles were sold in the United States in 2017, and more than 1.4 million plug-in cars were sold in the United States in 2018. Road repairs, snow plowing, law enforcement, and improvements are funded through state and federal gas taxes. Electric vehicle sales make up approximately 1 percent of light-duty car sales in the United States. However, expanding development and production raises concerns of declining gas tax revenues. Electric vehicles pay the same registration fees as traditional vehicles, but because the vehicles use no or less gasoline, the electric vehicles do not contribute as much to maintain the roadways through the gas tax. As of 2019, 26 states had enacted legislation to implement a special registration fee on alternatively fueled or electric vehicles in addition to the standard registration fees. The special registration fees vary from \$50 to \$200 per year. North Dakota joined other states that have a special registration fee on electric vehicles with the passage of Senate Bill No. 2061. The testimony indicated implementing an additional fee would help create equality among drivers regarding payment for the building and maintenance of roads. Testimony in opposition to the bill suggested the proposed fees for hybrid and electric vehicles was too high and proposed additional fees levied by the state should be used for electric vehicle infrastructure and charging stations rather than road use maintenance.

## **Background**

### **Types of Vehicles**

A vehicle powered by an internal combustion engine runs on gasoline, diesel, or renewable and alternative fuels such as biodiesel and ethanol. An electric vehicle or plug-in electric vehicle derives all or part of its power from electricity supplied by the electric grid. The two basic types of electric vehicles are all-electric and plug-in hybrid electric vehicles. A major feature of electric vehicles is the vehicles can be plugged in to charge from an off-board electric power source.

A plug-in hybrid electric vehicle is distinguished from a hybrid electric vehicle (non-plug-in) in that a hybrid electric vehicle supplements its internal combustion engine with battery power, but cannot be plugged in to an external power source. An all-electric vehicle runs only on electricity and is powered by one or more electric motors receiving electricity from an electric grid and stores the electricity in onboard batteries. Most all-electric vehicles have ranges of 80 to 100 miles, and some can travel up to 250 miles on a single charge. Plug-in hybrid electric vehicles run on electricity for 6 to 40 miles, then switch to an internal combustion engine and run on gasoline when the battery power is depleted, allowing drivers to use electricity when possible and gasoline when needed.

### **Types and Costs of Electric Vehicle Charging Stations**

The three levels of plug-in electric vehicle chargers are classified based on the speed by which the charger recharges a battery. A Level 1 charger uses a standard household 120-volt wall outlet to charge an electric vehicle, has the ability to charge most electric vehicles on the market, and takes over 8 hours to charge an electric vehicle for approximately 75 to 80 miles. A Level 2 charger requires a specialized station that provides power at 240 volts, has the ability to charge most vehicles on the market, and takes approximately 4 hours to charge a battery to 75 to 80 miles. Level 3 chargers (DC fast charger) are located at dedicated electric vehicle charging stations and charge a battery, using specialized equipment through a 480-volt input, up to 80 percent capacity or 90 miles in approximately 30 minutes. A Level 3 charger is compatible only with certain models of electric vehicles.

The average cost of electric vehicle charging supply equipment and installation for charging stations is \$300 to \$1,500 for equipment, and up to \$3,000 for installation of a single-port Level 1 charging unit; \$400 to \$6,500 for equipment, and \$600 to \$12,700 for installation of a single-port Level 2 charging unit; and \$10,000 to \$40,000 for equipment, and \$4,000 to \$51,000 for installation of a single-port Level 3 (DC fast charging) unit.

### **Fees and Relevant Information**

In 2017 North Dakota had 562,341 licensed drivers, and approximately 1.1 million vehicle registration renewals were issued. The Department of Transportation's main source of state funding for road maintenance comes from state and federal fuel taxes, and a smaller amount comes from vehicle registration fees. As of 2017, it cost \$1 million per mile for asphalt surfacing reconstruction. The state fuel tax is 23 cents per gallon. The federal fuel tax is 18 cents per gallon for gasoline and 24 cents per gallon for diesel fuel. From 2015 to 2017, the state generated \$198.5 million in gasoline/gasohol taxes, \$184.6 million in vehicle registration fees, and \$146.3 million in diesel fuel taxes. The funding is used for road repair and construction plus other transportation services. Approximately 93 percent of the money received by DOT for transportation is spent for maintaining and constructing the state's system of roads and bridges and providing assistance for public transit providers. Approximately 4 percent is spent on driver's license, motor vehicle, and public safety services. Approximately 3 percent is spent on administrative activities. The majority of federal revenue is dedicated to pay for a share of eligible highway improvement costs. The federal share is typically 80 percent, with the state or local government providing a 20 percent match.

### **Relevant North Dakota Legislation Regarding Electric Vehicles**

House Bill No. 1405 (2019), codified as Section 39-10-50.1, mandates parking spaces designated for plug-in electric vehicles must be indicated by signage approved by DOT indicating the space is for plug-in electric vehicle charging only. An individual is prohibited from stopping, standing, or parking a motor vehicle within any parking space specifically designated for parking and charging a plug-in electric vehicle unless the motor vehicle is connected to the charger.

## **Testimony and Committee Considerations**

### **Department of Transportation**

The committee received testimony from a representative of DOT regarding an update on the electric vehicle infrastructure coalition, parties involved, and plans moving forward. The number of registered electric vehicles in the state, which is rising, includes 166 electric vehicles and 193 plug-in hybrid vehicles. The number of charging stations in the state also is rising. The Department of Transportation collected approximately \$24,030 in electric vehicle and hybrid fees from July 1, 2019 to July 1, 2020. The goal of the electric vehicle infrastructure coalition is to work on connectivity of the transportation system and to prepare for the future of electric vehicles by working with key energy, automotive industry, and government stakeholders. The purpose of the coalition is to identify a variety of issues related to electric vehicles including charging stations established within the state, advantages of electric vehicles and cost-savings, battery life, range, and legislation that may need to be changed. According to the testimony, DOT intends to install electric vehicle charging stations at key areas at district offices, expand the state fleet to include electric vehicles, and research electric snowplows. The testimony indicated none of the charging stations located in the state require electric vehicle owners to pay to charge cars. However, the testimony indicated privately owned and publicly available charging stations, much like gas stations, are likely to be established.

### **Department of Environmental Quality**

A representative of DEQ provided an overview of the Volkswagen settlement and fund. According to the testimony, Volkswagen installed emission testing defeat devices in approximately 500,000 of its diesel-powered vehicles beginning

in 2009, which could detect when the vehicle was being tested, in violation of the federal Clean Air Act. Volkswagen entered consent decrees with the United States Department of Justice and agreed to spend \$10 billion to buy back or fix customer vehicles, \$2 billion on zero-emission vehicle infrastructure projects, and \$2.7 billion in an environmental mitigation trust. North Dakota received \$8.1 million from the trust, and in 2017 the governor appointed the State Department of Health's Division of Air Quality, as the beneficiary. The Department of Environmental Quality developed a mitigation plan for use of the funds over a 10-year period and the plan included charging station infrastructure. Under the plan, DEQ could spend up to \$1.2 million on zero-emission vehicle equipment, including charging stations in the 1<sup>st</sup> year of the project. The Department of Environmental Quality received 19 applications for electric vehicle fast-charging station equipment totaling \$2 million, which was \$800,000 over the available allocated amount. The scoring of applications for charging stations took into consideration the long-term cost of maintenance and repair of the potential stations and how the entity planned on charging for the use of the charging station to help maintain the station. Seventeen Level 3 fast-charging stations were awarded, placing stations in 10 communities across the state, at a cost of roughly \$50,000 each.

### **DriveElectricND**

The committee received testimony from a representative of DriveElectricND, a statewide stakeholder group working to advocate and educate the values of electric vehicles. The testimony indicated support for growing electric vehicle infrastructure in the state because electric vehicles are a positive step for improving tourism, workforce transportation, and the quality of life in the state. According to the testimony, three main obstacles for consumers to owning and operating an electric vehicle in the state are range anxiety related to the distance required to travel, lack of electric vehicle charging infrastructure, and the retail price of purchasing an electric vehicle. It was noted there are a lack of fast chargers in the state. The testimony indicated electric vehicle owners are supportive of paying their fair share for road use, but the proper amount is being debated.

### **Conclusion**

The committee voiced concern with the state's involvement in setting up electric vehicle charging stations. Some committee members indicated private industry should be taking the lead on the development of electric vehicle infrastructure and taxpayers should not be responsible for electric vehicle charging stations. The committee indicated as electric vehicles become more mainstream and commonplace, the free market eventually will fill the gaps and address the demand for infrastructure and other services. The committee voiced concerns if more electric vehicles are on the road and there is a decline in available funds from the gas tax, a discussion will be needed regarding how to maintain the state's road infrastructure.

The committee makes no recommendation regarding its study of electric vehicle infrastructure.

### **ROAD TRAINS**

Section 2 of Senate Bill No. 2176 (2019) directed a study of the feasibility and desirability of creating a road train pilot program. A road train is a trucking vehicle consisting of two or more connected trailers or semitrailers linked and hauled by a single operating prime mover or tractor unit in the front.

### **Legislative History**

Senate Bill No. 2176, as introduced, would have required DOT to establish a statewide road train pilot program in collaboration with South Dakota and Minnesota transportation officials and agencies. The bill also would have required DOT to consult with a committee designated by the Legislative Management in establishing the pilot program and to establish the parameters and policies regarding the use of road trains on state highways, including routes, hours of operation, and length and width restrictions. The bill would have required a Legislative Management study of the feasibility and desirability of creating a road train pilot program. The Senate amended the bill to remove a \$200,000 appropriation to conduct the study. The House further amended the bill to make the pilot program by DOT contingent on the favorable recommendation of the Legislative Management and completion of the study.

The testimony indicated there is a shortage of 900,000 truck drivers with a commercial driver's license (CDL) in the United States. Australia and several countries in Europe are using road trains and platooning as a way to move large amounts of freight with a shortage of CDL-licensed truck drivers. The testimony also indicated a concern that a road train may be very hard on the roads in the state and could create safety issues, and while shipping costs may be reduced, additional road maintenance costs may offset the reduced shipping costs. Support for the bill noted road trains could help fill the gap between the shortage of CDL drivers in the state and the capacity of railroads to move freight. The testimony also indicated North Dakota is an ideal location for a road train pilot program due to the low population and relatively flat terrain.

## Background

### Federal Law

The United States Department of Transportation's Federal Highway Administration is responsible for certifying state compliance with federal standards regarding commercial motor vehicle (CMV) size and weight to preserve the nation's infrastructure and keep vehicles moving efficiently on the highways.

The federal government first enacted size regulations for CMVs with the passage of the Federal Aid Highway Act of 1956. The Act provided a maximum vehicle width of 96 inches on the interstate highway system. The Federal Aid Highway Act of 1976 increased the allowable width for buses to 102 inches, and the Surface Transportation Assistance Act of 1982 extended the width requirement of 102 inches to commercial trucks. The Surface Transportation Assistance Act of 1982 also expanded the highway network on which the federal width provision applied from the interstate to the National Network of highways.

In 1982 Congress established minimum length standards for most commercial truck tractor-semitrailers and for twin trailers pulled behind a truck tractor to standardize the enforcement of length along the National Network. The minimum allowable length limit for the semitrailer in a truck tractor-semitrailer combination is 48 feet or the grandfathered limit for a state. The grandfathered length in North Dakota is 53 feet. A truck tractor is defined as a non-cargo-carrying power unit used in combination with a semitrailer. A truck that carries cargo on the same chassis as the power unit and cab, commonly known as a straight truck, is subject only to state provisions. A straight truck towing a trailer or semitrailer is subject only to state vehicle length regulations, except the total length of its two cargo-carrying units may not exceed a federally established limit of 65 feet. The minimum allowable length states must allow for truck tractor-semitrailer-trailer combinations on the National Network is 28 feet. States also must allow the continued use of 28.5-foot semitrailers that were in use on December 1, 1982, provided the overall length of the combination does not exceed 65 feet. Semitrailers up to the maximum length which were lawfully operating in a truck tractor-semitrailer combination in a state on December 1, 1982, may continue to operate after that date.

There is no federal vehicle height requirement for CMVs. States may set their own height restrictions. Most height limits range from 13.5 feet to 14 feet, with exceptions granted for lower clearance on particular roads.

### State Law

Under Chapter 39-12, motor vehicles are limited as to width, height, length, and weight but are allowed special permits under certain circumstances and are exempt if of a certain type. The width limitation is 8.5 feet, with exceptions. The height limitation for vehicles operated on highways in the state is 14 feet, with exceptions. The length limitation is 50 feet for a single unit vehicle with two or more axles; 75 feet for a combination of two, three, or four units; 110 feet for a combination of two, three, or four units operated on four-lane divided highways and designated highways; 53 feet for a trailer or semitrailer; and 60 feet for towed vehicles. Weight limitations on the interstate highway system include wheel load limitations of 10,000 pounds or one-half of axle load, tire load limitations of 550 pounds per inch of width, single axle limitations of 20,000 pounds, and multiple axle limitations of 17,000 pounds per axle for axles over 40 inches and under 8 feet apart. The gross weight limitation is 80,000 pounds. A person may operate a vehicle on the interstate highway system at the highest weight allowed by congressional action, regardless of state law. Under federal law there are limits on the size and weight of vehicles on the interstate system and other qualifying federal-aid primary system highways. The length and weight limitations grandfathered in North Dakota for longer combination vehicles are 103 feet and 105,500 pounds. State law provides for general weight limitations on highways other than the interstate system. The weight limitations are by tire, wheel, and axle loads.

The governmental entity with authority over a highway may issue harvest permits that allow a motor vehicle to exceed weight limitations by 10 percent up to 105,500 pounds. The permits are for agricultural products moving from the field of harvest to the point of initial storage or for the collection and transport of solid waste during the period of July 15 to December 1. A wintertime permit also is allowed for the general movement of products from December 1 to March 7. The governmental entity may issue a permit for vehicles carrying potatoes or sugar beets from July 15 to December 1 to exceed the weight limitations by 10 percent, not to exceed 105,500 pounds. The director of DOT may issue a permit for a truck with a gross weight that exceeds 105,500 pounds, but does not exceed 129,000 pounds for \$100 per month or \$700 per year. The Highway Patrol and, when appropriate, local authorities may charge for and issue special written permits to operate a vehicle exceeding the size or weight maximums specified in Chapter 39-12.

### 2015-16 Interim Study of Truck Size and Weight Provisions

Section 10 of House Bill No. 1012 (2015) directed a study of the truck size and weight provisions under Chapter 39-12 relating to size, width, and height restrictions. The findings of the study were to be used in collaboration with an UGPTI and DOT study of the impacts to the state of harmonizing truck size and weight regulations with states in the Western States Transportation Alliance. The final report by UGPTI in 2016 indicated several key findings--truck harmonization would reduce shipper costs for shipments that can take advantage of increased loading, for both intrastate and interstate long-combination vehicles; the increased size and weight of trucks would reduce the number of trucks on

the roadways; and local road connectivity issues including inadequate roadway intersection geometry to accommodate longer trucks that require larger turning radii, and increased traffic delay in urban areas and signalized intersections. The transportation committee did not make any recommendations as a result of its truck size and weight harmonization study. However, the Legislative Assembly passed House Bill No. 1255 (2017), which authorized the director of DOT to issue a permit for a truck with a gross weight that exceeds 105,500 pounds, not to exceed 129,000 pounds. The bill provided the permit fee is \$100 per month or \$700 annually.

### **2019 Legislation**

The Legislative Assembly adopted House Bill No. 1199 (2019), which exempted a nonlead vehicle from the prohibition on following another vehicle too closely and required DOT to develop an operational plan that provides guidelines for operating a platoon.

### **Testimony**

Testimony from a sponsor of Senate Bill No. 2176 indicated implementing a road train pilot program is needed because of increased freight demand, a lack of qualified CDL drivers, decreased rail availability, growth in specialized container shipping, and more efficient freight movement. It was noted the United States is experiencing shipping inefficiencies and delays during a time of increasing demand, and road trains could be a viable solution to the issue.

### **Upper Great Plains Transportation Institute**

A representative of UGPTI testified following the 2016 harmonization study, UGPTI conducted another study to develop an implementation process for truck harmonization and for adding routes allowing truck weights up to 129,000 pounds. The study reviewed various truck configurations, and DOT conducted an engineering analysis on bridges and pavement that may be impacted along the routes. The analysis and report from the 2016 truck harmonization study indicated some bridges in the state would deteriorate faster under increased load weights at 129,000 pounds. Since the development of the 129,000-pound roadway network, the state uses an external bridge formula, which considers the axles from the front axle of the truck configuration under the hauling unit to the rear axle of the truck configuration. The formula determines how much weight a truck can haul depending on the number of axles on the truck configuration and the distance between the axles. Load weights on the interstate highways must comply with the federal bridge formula.

According to the testimony, a road train pilot program would consider new truck configurations. The program would need to determine the axle configurations, the gross vehicle weight, the number of trailers, and the length to determine and evaluate adequately the potential impacts of a road train on existing bridge and pavement infrastructure. When considering an increase in gross vehicle weight to 200,000 pounds, which is proportionally divided among the axles of the truck, the primary issue is individual bridge analysis based on the truck configuration. Once the necessary information is determined, a bridge impact can be determined and applied to all bridges along a proposed pilot program corridor. According to the testimony, longer trucks and clusters of axles are preferable when considering impacts to bridges and pavement.

### **Department of Transportation and Highway Patrol**

Testimony from a representative of DOT noted divisible loads consist of agricultural products, water, and oil that easily can be broken down and separated when necessary to meet weight restrictions on roadways. Nondivisible loads, which include items such as transformers and substation generators, may exceed the weight and length restrictions of 400,000 pounds and 110 feet in length, but need to be able to be moved on state roadways. According to the testimony, nondivisible loads exceeding the weight limits for the specific road must get approval from the district engineer before being moved in the state.

In 2019, the Legislative Assembly established a 129,000-pound limited transportation network and a mechanism for commercial entities and individuals to make requests to add additional state roadways to the 129,000-pound network. Federal approval was required for interstate roads in the state to be included in the network. Businesses may apply to add roadways to the 129,000-pound network. Upon receipt of an application, DOT does an analysis of the roadway, holds public input meetings, and receives a recommendation from an advisory committee. The director of DOT makes the final determination regarding whether the roadway will be added to the 129,000-pound network. In 2019, North Dakota issued 113 annual permits, 608 monthly permits, and 161 single-day permits related to the 129,000-pound network.

The testimony expressed the following issues with a road train pilot program--a state or federal government agency may not waive statutes or federal regulations related to truck length or weight without an act of Congress, there is not a mechanism in place to test or license for truck combinations longer than the national standard, and the impact of heavier truck loads to the pavement and the bridges must be evaluated to determine the necessary vehicle configurations. It was noted allowing longer and heavier trucks on state highways not connected to the National Network is a possibility, but most of those roadways are two-lane highways with no shoulders, which could create safety concerns. Testimony

from a representative of the Highway Patrol was in agreement with the issues raised by DOT concerning the National Network and the lack of a mechanism for training, testing, and licensing for vehicles longer than the national standard.

### **Other Testimony**

Testimony from a representative of the Department of Agriculture was supportive of the study and a road train pilot program. Testimony from a representative of the Industrial Commission indicated commission members are interested in further research on the topics of road trains and a pilot program.

The committee received testimony in opposition to allowing road trains in North Dakota from representatives of the North Dakota Association of Counties, AAA-The Auto Club Group, the Morton County Highway Department, the Richland County Sheriff's Office, the McKenzie County Sheriff's Office, the Pierce County Commissioners, the Pembina County Board of Commissioners, Wahpeton City Councilmen, Slope County Road Foremen, and the Owner-Operator Independent Drivers Association. The testimony reflected concerns that allowing road trains in the state would cause damage to road and bridge infrastructure that was not designed to accommodate heavier trucks, longer and heavier trucks would create safety issues on state roadways, and there is a lack of state and federal rules in place to properly oversee road train use in the state.

### **Committee Considerations**

The committee indicated there are issues that need to be addressed regarding the logistics of moving freight to a loading point if road trains are allowed only on certain highways or roads in the state, and a pilot program, if implemented, may need to include certain exceptions or waivers to make the program feasible. The committee concluded a pilot program on the National Network is not feasible because without changes at the federal level, a pilot program only could be operated on state and local roadways. The committee also concluded more research is needed regarding the economic impact of permitting road train operations in the state, impacts to existing infrastructure, and the cost associated with implementing a program. Until research and data are available, there is no mathematical or theoretical basis on which to model a pilot program or to determine the impact a pilot program would have on road infrastructure. Funding is needed to conduct thorough research. The committee indicated DOT must be involved in obtaining required approvals if a pilot program is pursued in the state.

The committee considered a resolution draft urging congress to amend cargo carrying truck length and weight restrictions on state highways and interstate highways that are a part of the National Network to allow North Dakota to conduct a road train pilot program, and to permanently amend the restrictions to allow road trains on the National Network highways and interstate highways if the pilot program is successful. The resolution received general support from the committee. The committee did not receive any testimony in opposition to the resolution draft.

The committee also considered a bill draft relating to the governor's authority to exceed size and weight limitations on motor vehicles for the operation of road trains. The bill draft would allow the governor to make certain changes and allow road trains meeting certain criteria to be operated in the state. The committee members indicated the bill does not mandate road trains be operated in the state, but allows for the possibility of road trains in the future. Several committee members indicated support for the bill draft but are seeking more information before supporting the enactment of the bill into law. Several committee members opposed the bill draft because it delegated authority over road trains to the governor.

### **Recommendations**

The committee recommends [House Concurrent Resolution No. 3001](#) urging Congress to temporarily amend cargo carrying truck length and weight restrictions on state highways and interstates that are a part of the National Network to allow North Dakota and surrounding states to conduct a road train pilot program and to permanently amend the restrictions to allow road trains on the National Network highways and interstates if the pilot program is successful.

The committee recommends [Senate Bill No. 2026](#) granting the governor the authority to exceed size and weight limitations on motor vehicles for the operation of road trains.

## **AGRICULTURAL ISSUES**

Section 1 of House Bill No. 1467 (2019) directed a study of agricultural issues in the state, including grain buyers, roving grain buyers, grain brokers, and grain handling facilities under Title 60.

### **Legislative History**

House Bill No. 1467, as introduced, would have removed warehouse companies engaged in the marketing, storage, or handling of agricultural products from the general jurisdiction of the Public Service Commission (PSC). The bill also would have transferred the authority over grain buyers, warehousing, deposits, and warehousemen from the PSC to the Agriculture Commissioner. The Senate amended the bill to provide for the study. Testimony on House Bill No. 1467 indicated concerns about the number of grain inspectors in the state being reduced from 10 to 1.75 full-time equivalent

positions. As a result of the reduction, regulation and oversight of grain was reduced and quality control issues and other detrimental effects arose. Testimony indicated although self-insured indemnity funds paid by farmers provide protection for producers in the state, better protection and oversight by the state for farmers is needed. Of the 373 grain warehouses licensed in North Dakota, 264 are licensed by the state and 109 warehouses are licensed by the United States Department of Agriculture. There also are 99 licensed roving grain buyers in the state. Testimony indicated interest in limiting a roving grain buyer's annual grain purchases and requiring a roving grain buyer to provide proof of adequate bonding, a verified line of credit from a financial institution, and adequate assets. Testimony also indicated a need to study grain brokers because of the lack of state oversight, regulation, and bonding of grain brokers.

### **State Warehousing and Deposits Law**

Until the transfer of authority in Senate Bill No. 2009 (2019), grain licensing and inspection had been a part of the PSC's jurisdiction for over 127 years. Public warehousemen and grain buyers are required to file a bond conditioned for the faithful performance of duties and compliance with the law and which is in a sum not less than \$5,000. A grain warehouse may elect to be licensed by federal or state authorities. The federal government regulates grain warehouses under the United States Warehouse Act, which is administered by the United States Department of Agriculture. Licensing under the Act is voluntary. A grain warehouse licensed under the Act must meet certain requirements for sound warehouse operations including being bonded. The bond for a state-licensed facility is based on the physical capacity of the facility. A federally licensed entity must have a grain buyer's license and a bond based on volume. A grain buyer's bond is determined by the 3-year rolling average of grain purchased annually in the state. The bond of a grain buyer may not exceed \$2 million.

Senate Bill No. 2009 transferred all regulatory authority over Title 60, including grain and seed warehouses, grain buyers, insolvent grain warehousemen, uniform accounting for public elevators and warehouses, public warehouses on railroad rights of way, and credit-sale contract indemnity, from the PSC to the Agriculture Commissioner. The bill required applicants for a public warehouse or grain buyer license to provide financial records to the Agriculture Commissioner, upon request, as a condition of licensure and to require the Agriculture Commissioner to maintain the confidentiality of the records. The bill also changed the amounts of an annual or biennial license fee for a public warehouse and the bond amount required by an applicant for a grain buyer license.

### **North Dakota Century Code Title 60**

Chapter 60-01 provides the general provisions regarding deposits which apply to Title 60, including definitions. Chapter 60-02 regulates grain and seed warehouses. Senate Bill No. 2009 added a provision to require any public warehouse that desires to obtain a license to conduct business in the state, to provide financial records to the Agriculture Commissioner upon request, authorize the commissioner to obtain financial records regarding the applicant from outside sources, and information obtained by the commissioner is confidential.

Chapter 60-02.1 provides for provisions regarding grain buyers. Senate Bill No. 2009 required any grain buyer that desires to obtain a license to conduct business in the state to provide financial records to the Agriculture Commissioner upon request and authorize the commissioner to obtain financial records regarding the applicant from outside sources. Chapter 60-04 addresses insolvent grain warehousemen, Chapter 60-05 addresses uniform accounting for public elevators and warehouses, Chapter 60-06 addresses public warehouses on railroad rights of way, and Chapter 60-10 provides for credit-sale contract indemnity.

## **Testimony**

### **North Dakota Department of Agriculture**

According to testimony from a representative of the Department of Agriculture, some of the most frequent infractions of the requirements under Title 60 are the failure of producers to convert scale tickets in the time frame required by law. Upon the lapse of the time frame, the elevator gets punished if the producer threatens to take business elsewhere unless the elevator agrees to convert the ticket to a contract. The testimony indicated producers need to be held responsible for their actions or inaction. Another noted common infraction is the failure to get signatures on contracts. The law requires accountability of all parties involved in grain transactions. The testimony further indicated a need to create a custodial account for the money to be placed in after a grain sale so the money would not be accessible for use by the elevator or buyer. In a bankruptcy proceeding, a financial institution would be able to capture the funds held in a custodial account. According to the testimony, the state also needs to ensure there are proper tools and oversight in place for roving grain buyers and brokers to conduct business in a sound and responsible manner. The department does not have the ability to force buyers to go through the licensing process or issue fines for violations of the law. Adding the ability to issue fines would provide the commissioner some authority in demanding buyers obtain a license to conduct business in the state and comply with the law.

The testimony included the following recommended statutory changes to Title 60:

- Simplify the number of grain buyer license types;



- Remove facility-based grain buyers;
- Add additional oversight over roving grain buyers and brokers;
- Return all licenses under the law to annual license periods;
- Simplify fees to be consistent across all license types;
- Base fees for each license on the value of grain rather than volume;
- Require license applicants to meet financial criteria and net worth standards to be eligible to obtain a license;
- Change required bonding amounts;
- Reduce the time frame allowed for scale ticket conversion to 30 days;
- Require producers that fail to convert scale tickets within the allowable time to lose trust fund and indemnity fund protection;
- Require money to be held in custodial accounts;
- Add the ability of the Agriculture Commissioner to fine for violations of the chapter; and
- Allow e-signatures to meet contract signing requirements.

The testimony indicated it also may be helpful to work with the insurance industry to develop a product that would allow farmers and producers to self-insure and receive coverage above and beyond bonds and the indemnity fund currently in place.

### **North Dakota Grain Dealers Association**

Testimony from a representative of the North Dakota Grain Dealers Association was generally supportive of statutory changes to Title 60 suggested by the Department of Agriculture. The testimony was not supportive of the recommendation to require custodial accounts because it would not be feasible for many grain dealers. According to the testimony, requiring warehouses and elevators to have funds in a custodial account would be difficult. Because some businesses conduct \$100 million of grain transactions in a year, requiring a warehouse or elevator to hold millions of dollars in a custodial account may not be feasible.

The testimony indicated increasing the bonding levels for roving grain buyers would help reduce the number of problematic roving grain buyers. According to the testimony, the issue with some roving grain buyers is the producer makes a deal with the roving grain buyer and another individual is picking up the grain and delivering it to the elevator on behalf of the producer. The producer trusts the roving grain buyer to deliver a check to the producer once the grain has been delivered to the elevator, which may not occur. According to the testimony, allowing electronic signatures to satisfy signing requirements on credit-sale contracts would alleviate some issues regarding grain conversion. The testimony also recommended adding if a grain broker knew or should have known the transactions the broker is brokering are risky or questionable, the broker's bond may be captured if there is an insolvency, as brokers should have some accountability under the law for the transactions they broker.

### **Other Testimony**

A representative of a law firm provided an overview of how financial institutions address bankruptcy and insolvency issues related to the grain industry and grain elevators. According to the information, once a sale of grain takes place, title of the grain passes to the buyer. When elevators receive grain by sale at a price to be determined at a later date, the grain belongs to the elevator. Current law is unclear as to who owns the grain when it is in an elevator. If the grain is the property of the elevator, the bank is allowed to finance the operations of the elevator based on the grain as collateral. It was suggested the law may need to be clarified regarding when grain belongs to an elevator and can be used as collateral for operating budgets, and when the grain remains the property of the producer.

Agricultural loans from banks include a real estate component, equipment financing and other capital expenditures, and annual operating and living expenses. Repayment of the loans depends on cashflow of a farming operation and cashflow comes from the sale of farm products. The loans are collateralized by the crops the producer grows as well as the equipment of the producer, and if necessary, the land of the producer. The bank relies on the proceeds of that year's crop to repay the operating loan. If crop proceeds are not realized by a producer because of an elevator insolvency, the producer does not have the cashflow to repay the operating loan and the producer may be forced to sell equipment or land to generate income to repay the operating loan. A bank may take legal action to force a liquidation and repayment of the operating loan in some circumstances.

Cashflow-based lending allows producers to borrow money based on their projected future cashflows. In cashflow lending, a bank grants a loan based on the producer's past and future cashflows. The producer does not have cashflow

and ability to repay the operating loan until receiving proceeds from the crop. If the cashflow is not sufficient, banks use collateral-based lending. Collateral-based lending is used when a borrower cannot show enough cashflow or cash assets to cover the debt but receives lending by putting up collateral in case of a default. A collateral-based loan or line of credit can be secured by inventory, accounts receivable, equipment, or other property owned by the borrower. A bank in an action to recover the possession of personal property may claim the immediate delivery of the property. A bank also may force a liquidation of assets through a real estate foreclosure.

North Dakota banks also provide operating capital to grain elevators. Elevator insolvencies can have a significant effect on a community if the community's producers already are struggling. According to the testimony, the credit-sale contract indemnity fund was created to protect grain producers that sell grain via credit-sale contracts to a grain warehouse. The fund ensures producers are able to recover on a contract if the warehouse becomes insolvent. Most banks finance elevators based on the collateral position of the elevator and the value of the collateral. Banks try to determine the exact collateral of an elevator at a single moment in time to calculate operating loan amounts. Grain is the only collateral of the elevator available to cover the operating loan from the bank. During an insolvency, grain sold in an elevator's receivables is not covered under the credit-sale contract indemnity fund. When the grain is sold, the proceeds are kept by the elevator and the bank.

The committee received testimony from a roving grain buyer which generally supported the changes to Title 60 recommended by the Department of Agriculture and the North Dakota Grain Dealers Association.

### **Committee Considerations**

Committee members voiced concern that the time to convert a scale ticket under the current law is too long. The committee members also voiced concern that grain delivered to an elevator under a warehouse receipt that has not been converted to a credit-sale contract should be available to pay the producers that sold the grain to the elevator in the event of an insolvency. Several committee members voiced support for increasing bonding levels in Title 60 but raised questions regarding the proper amounts and raising minimum bonding levels to a point that may restrict access to the market to a person looking to start a business in the grain industry.

The committee considered several versions of a bill draft relating to changes to Title 60 as recommended by the Department of Agriculture and the North Dakota Grain Dealers Association. The bill draft was a collaborative effort among the stakeholders and incorporated the suggested stakeholder changes. The bill draft would:

- Add a definition of "deferred-payment contract" to Chapter 60-02 regarding grain and seed warehouses and add "grain processors" under Chapter 60-02.1;
- Return all public warehouse licenses to annual licenses, change the licensing fee amounts, and alter the licensing criteria so the licenses and fees are based on the value of the grain held instead of the volume;
- Require warehouses to meet certain financial criteria and to submit financial documentation of net worth to be eligible to receive a license in the state;
- Require public warehouses to meet certain conditions related to criminal background checks, credit scores, and business knowledge to be licensed to do business in the state;
- Raise minimum bonding amounts for grain warehouses;
- Reduced the number of days a producer has to convert a scale ticket and require the producer to lose trust fund and credit-sale contract indemnity fund protection under the law for failure to convert a ticket within the designated time;
- Allow e-signatures to satisfy credit-sale contract signing requirements and required unsigned contracts to be considered unconverted scale tickets;
- Require warehousemen using deferred-payment contracts to offer producers bond protection;
- Amend provisions in Chapter 60-02.1 regarding grain buyers;
- Add definitions of "deferred-payment contracts," "grain broker," and "grain processor," remove "facility-based grain buyers," and amend the definition of "grain buyer" to include roving grain buyers, grain brokers, and grain processors;
- Impose licensing and bonding requirements for grain buyers, roving grain buyers, and grain brokers;
- Ensure all grain buyer licenses are annual licenses, change the licensing fee amounts, and alter the licensing criteria so the licensing and fees are based on the value of the grain held;

- Require grain buyers to meet certain financial criteria and net worth and submit financial documentation to be eligible to receive a license in the state;
- Raise minimum bonding amounts for grain buyers;
- Allow e-signatures to satisfy credit-sale contract signing requirements and require holders of unsigned contracts be ineligible for the protection provided by the indemnity fund;
- Make grain brokers liable if they take part in questionable grain transactions resulting in insolvency; and
- Repeal several sections dealing with facility-based grain buyers.

Representatives of the Department of Agriculture and the North Dakota Grain Dealers Association testified in support of the bill draft. The committee received no testimony in opposition of the bill draft.

### **Recommendation**

The committee recommends [House Bill No. 1026](#) relating to changes to Title 60 regarding grain buyer, grain broker, grain processor, and warehousemen licensing and bonds.

## **REPORTS**

### **Transportation Network Companies**

The committee received reports from DOT regarding information collected from transportation network companies during each biennium. The reports list all political subdivisions in the state where transportation network companies, such as Uber and Lyft, operate, the number of accidents reported, and the number of traffic violations that were reported. The Department of Transportation is required to report this information to the Legislative Management each biennium. The committee was informed the reports are of little value. The committee considered a bill draft to eliminate the reporting requirements. The committee received no testimony in opposition to the bill draft.

### **Recommendation**

The committee recommends [Senate Bill No. 2027](#) to repeal transportation network company reporting requirements.

### **Advisory Committee on Sustainable Agriculture**

The committee received a report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities. The committee was established to accomplish a number of tasks, including examine the concept of sustainability with respect to conventional farming practices and modern technology-based production practices, and explore metric evaluations to measure the attainment, maintenance, and certification of sustainability. The committee last met in 2010.

### **Federal Environmental Law Impact Review Committee**

The committee received a biennial report from the Federal Environmental Law Impact Review Committee. The committee's funding is being used on legal issues surrounding the Waters of the United States and for studies on threatened and endangered species and habitat.

### **State Board of Agricultural Research and Education**

The committee received a report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures. Final ranking of programmatic initiatives, capital improvement projects, and one-time expenditures was completed in June 2020. The State Board of Agricultural Research and Education is undertaking initiatives in big data and livestock. The big data initiative is a top-ranked priority to develop the capability to collect, manage, and analyze large data sets. The livestock initiative is focusing on the need for livestock production expansion in the state.

### **Department of Environmental Quality**

The committee received a report from DEQ on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the 1<sup>st</sup> full year of the 2019-21 biennium. Permit applications were received for 13 existing operations and 3 new operations. Of the 16 applications, 6 were issued, 9 are pending, and 1 application was withdrawn.

### **Public Transportation Services**

The committee received a report from DOT regarding its study of public transportation services within the state. In 2018, there were 2,695,712 riders of public transportation services within the state. Approximately 76 percent of the ridership occurred in urban areas of the state, and 24 percent occurred in rural areas. The report showed 39 percent of the ridership population come from urban areas and 61 percent come from rural areas.

# BUDGET SECTION

The Legislative Management's Budget Section is established in North Dakota Century Code Section 54-35-02.9. The section provides the Budget Section consists of the Majority and Minority Leaders of the House and Senate, the Assistant Majority and Minority Leaders of the House and Senate, the Speaker of the House, and the members of the House and Senate Appropriations Committees. The Legislative Management is to designate the chairman of the Budget Section and the chairman is to call quarterly meetings.

Section 54-35-02.9 provides the Legislative Assembly, by law, may provide for the Budget Section to approve specific actions, projects, and transfers. When evaluating state agency requests, the Budget Section is to consider criteria applicable to the request, including whether:

1. The request is for a specific purpose;
2. The request is for a specific amount of funds and for a specific time frame, not to continue beyond the end of the current biennium;
3. The request conforms with legislative intent;
4. The request is consistent with related statutory provisions;
5. The request supports state priorities;
6. The request improves state efficiencies and promotes effective state government;
7. If the request is for a new program, the program does not extend beyond the current biennium; and
8. The request addresses a state emergency.

Budget Section members were Senators Terry M. Wanzek (Chairman), Brad Bekkedahl, Dick Dever, Robert Erbele, John Grabinger, Joan Heckaman, David Hogue, Ray Holmberg, Jerry Klein, Karen K. Krebsbach, Gary A. Lee, Tim Mathern, Dave Oehlke, Nicole Poolman, Larry J. Robinson, Ronald Sorvaag, and Rich Wardner and Representatives Bert Anderson, Thomas Beadle, Larry Bellew, Tracy Boe, Josh Boschee, Mike Brandenburg, Jeff Delzer, Karla Rose Hanson, Richard G. Holman, Michael Howe, Keith Kempenich, Lawrence R. Klemin, Gary Kreidt, Scott Louser, Bob Martinson, Lisa Meier, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Chet Pollert, Mark Sanford, Mike Schatz, Jim Schmidt, Randy A. Schobinger, and Don Vigasaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

The following duties assigned to the Budget Section by law or by Legislative Management directive were acted on or reports were received during the 2019-20 interim:

1. **Annual report from the North Dakota State University (NDSU) Extension Service (Section 11-38-12)** - This section requires, within the duties of the NDSU Extension Service, an annual report to be provided to the Budget Section regarding any adjustments or increases of full-time equivalent (FTE) positions.
2. **Higher education campus improvements and building maintenance (Section 15-10-12.1)** - This section requires the approval of the Budget Section or the Legislative Assembly for campus improvements and building maintenance of more than \$700,000 on land under the control of the State Board of Higher Education (SBHE) which are financed by donations, gifts, grants, and bequests. Budget Section approval may be provided only when the Legislative Assembly is not in session, excluding the 6 months prior to a regular legislative session and the 3 months following the close of a regular session. The Budget Section approval must include a specific dollar limit for each campus improvement or maintenance project. If a request is to be considered by the Budget Section, the Legislative Council must notify each member of the Legislative Assembly and allow any member to present testimony to the Budget Section regarding the request. Campus improvements and building maintenance of \$700,000 or less and the sale of real property received by gift or bequest may be authorized by the board. Any new building or an addition to an existing building with a cost of more than \$700,000 requires approval by the Legislative Assembly.
3. **Sources of funds received for construction projects of entities under the control of SBHE (Section 15-10-12.3)** - This section requires each institution under the control of SBHE undertaking a capital construction project approved by the Legislative Assembly and for which local funds are to be used to present a biennial report to the Budget Section detailing the source of all funds used in the project.

4. **SBHE's semiannual project variance reports (Section 15-10-47)** - This section requires the Office of Management and Budget (OMB) to provide to the Budget Section upon request information relating to SBHE's semiannual project variance reports regarding construction projects valued at more than \$250,000.
5. **Annual report from the NDSU Main Research Center (Section 15-12.1-05)** - This section requires, within the duties of the NDSU Main Research Center, an annual report to be provided to the Budget Section regarding any adjustments or increases of FTE positions.
6. **Status of the State Board of Agricultural Research and Education (SBARE) (Section 15-12.1-17(10))** - This section requires, within the duties of SBARE, a status report to be provided to the Budget Section.
7. **Legacy and Budget Stabilization Fund Advisory Board semiannual reports (Section 21-10-11)** - This section requires the Legacy and Budget Stabilization Fund Advisory Board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy and budget stabilization funds as well as recommendations presented to the State Investment Board regarding investment of funds in the legacy and budget stabilization funds.
8. **State Fire Marshal report on fire departments funding (Section 18-04-02)** - This section provides the Budget Section receive a biennial report from the State Fire Marshal summarizing the expenditures by certified city fire departments, certified rural fire departments, and certified fire protection districts of funds received under Section 18-04-05 and the information on committed and uncommitted reserve fund balances of these entities.
9. **State disaster relief fund expenditures (Section 37-17.1-27)** - This section requires an agency to report to the Appropriations Committees of the Legislative Assembly or to the Budget Section on the purpose and payee of any expenditure from the state disaster relief fund.
10. **Abandoned oil and gas well plugging and site reclamation fund (Section 38-08-04.5)** - This section requires the Industrial Commission to report to the Budget Section on the status of the abandoned oil and gas well plugging and site reclamation fund and related information.
11. **Annual audits of renaissance fund organizations (Section 40-63-07(9))** - This section requires the Department of Commerce Division of Community Services to provide annual reports to the Budget Section on the results of audits of renaissance fund organizations.
12. **Report identifying every state agency that has not submitted a claim for property belonging to that agency (Section 47-30.1-24.1)** - This section requires the Commissioner of the Board of University and School Lands to present a report to the Budget Section identifying every state agency that has not submitted a claim for unclaimed property belonging to that agency within 1 year of receipt of the certified mail notification.
13. **Relinquishment of agency rights to recover property (Section 47-30.1-24.1)** - This section provides each state agency that does not submit a claim for unclaimed property belonging to that agency within 1 year of receipt of the certified mail notification relinquishes its right to recover the property upon approval of the Budget Section.
14. **Change or expansion of state building construction projects (Section 48-01.2-25)** - This section provides a state agency or institution may not significantly change or expand a building construction project approved by the Legislative Assembly unless the change, expansion, or additional expenditure is approved by the Legislative Assembly or the Budget Section if the Legislative Assembly is not in session, excluding the 6 months prior to a regular legislative session and the 3 months following the close of a regular session.
15. **Job insurance trust fund (Section 52-02-17)** - This section requires Job Service North Dakota report to the Legislative Council before March 1 of each year the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next 3 years.
16. **Warrants and checks outstanding for more than 90 days and less than 3 years (Section 54-11-01)** - This section requires the State Treasurer to report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than 3 years.
17. **Irregularities in the fiscal practices of the state (Section 54-14-03.1)** - This section requires OMB to submit a written report to the Budget Section documenting:
  - a. Any irregularities in the fiscal practices of the state;
  - b. Areas where more uniform and improved fiscal procedures are desirable;
  - c. Any expenditures or governmental activities contrary to law or legislative intent; and
  - d. The use of state funds to provide bonuses, cash incentive awards, or temporary salary adjustments for state employees.

18. **Acceptance and expenditure of federal funds of more than \$50,000 which were not appropriated. (Section 54-16-04.1)**
  - a. Acceptance of federal funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to accept more than \$50,000 of federal funds which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.
  - b. Expenditure of federal funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to spend more than \$50,000 of federal funds which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money.
19. **Acceptance and expenditure of other funds of more than \$50,000 which were not appropriated. (Section 54-16-04.2)**
  - a. Acceptance of other funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to accept more than \$50,000 from gifts, grants, donations, or other sources which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money or programs. Budget Section approval is not required if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state.
  - b. Expenditure of other funds - This section requires Budget Section approval for any Emergency Commission action authorizing a state officer to spend more than \$50,000 from gifts, grants, donations, or other sources which were not appropriated, and the Legislative Assembly has not indicated intent to reject the money or programs.
20. **Transfers exceeding \$50,000 (Section 54-16-04(2))** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than \$50,000 from one fund or line item to another. Budget Section approval is not required if the transfer is necessary to comply with a court order, to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid an imminent financial loss to the state.
21. **Consider authorization of additional FTE positions (Section 54-16-04.3)** - This section provides, on the advice of OMB and the recommendation of the Emergency Commission, the Budget Section may approve the employment by a state officer of FTE positions in addition to those authorized by the Legislative Assembly.
22. **Transfers of spending authority from the state contingencies appropriation exceeding \$50,000 (Section 54-16-09)** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than \$50,000 from the state contingencies line item to the appropriate line item in the appropriation of the state officer who requested the transfer. Budget Section approval is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or to avoid an imminent financial loss to the state. A total of \$500,000 was provided for the 2019-21 biennium.
23. **Housing incentive fund (Section 54-17-40)** - This section requires the Housing Finance Agency to provide a report at least once each biennium to the Budget Section regarding the activities of the housing incentive fund.
24. **North Dakota Outdoor Heritage Advisory Board (Section 54-17.8-07)** - This section provides the Budget Section receive a report from the North Dakota Outdoor Heritage Advisory Board on a biennial basis regarding the activities of the board.
25. **Report from the Industrial Commission on revenue impacts in excess of \$20 million (Section 54-17-42)** - This section requires if any order, regulation, or policy of the Industrial Commission necessary to implement the provisions of Chapter 38-08 has an estimated fiscal effect on the state in excess of \$20 million in a biennium, the Industrial Commission will provide a report to the Budget Section regarding the fiscal impact on state revenues and expenditures, including any effect on the funds of the Industrial Commission.
26. **Department of Corrections and Rehabilitation (DOCR) annual report on the department's prison population management plan (Section 54-23.3-11)** - This section requires DOCR to provide an annual report to the Budget Section regarding the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.
27. **Capital improvements preliminary planning revolving fund (Section 54-27-22)** - This section provides before any funds can be distributed from the preliminary planning revolving fund to a state agency, institution, or department, the Budget Section must approve the request.

28. **Reports from state agencies that applied for federal grants estimated to be \$25,000 or more (Section 54-27-27)** - This section requires OMB to present at each meeting of the Budget Section reports received from state agencies other than entities under the control of SBHE which have applied for federal grants estimated to be \$25,000 or more.
29. **Tobacco settlement funds (Section 54-44-04(23))** - This section requires the director of OMB to report to the Budget Section on the status of tobacco settlement funds and related information.
30. **Three Affiliated Tribes of the Fort Berthold Reservation investment of oil and gas tax receipts (Section 57-51.2-02)** - This section provides the Budget Section receive a report from the Three Affiliated Tribes annually regarding investment of oil and gas tax receipts in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry.
31. **Hub city annual report on use of funding received from allocations from the oil and gas gross production tax (Section 12 of House Bill No. 1358 (2013))** - This bill provides the Budget Section receive a report from a representative of a hub city annually on the use of funding received from allocations from the oil and gas gross production tax under Section 57-51-15.
32. **Report regarding any transfers between line items in excess of \$50,000 (Section 10 of Senate Bill No. 2012 (2019))** - This section requires the Department of Human Services (DHS) to report to the Budget Section after June 30, 2020, on any transfers in excess of \$50,000 made during the 2019-21 biennium between line items within subdivisions 1, 2, and 3 of Senate Bill No. 2012.
33. **Red River Valley Water Supply Project approval (Section 14 of Senate Bill No. 2020 (2019))** - This bill requires the Budget Section to approve certification from the State Water Commission that certain project plan criteria have been met for the Red River Valley Water Supply Project.
34. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2020 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.
35. **Agriculture research and related entities FTE positions (Section 8 of House Bill No. 1020 (2019))** - This bill requires SBHE to report to the Budget Section annually regarding any adjustments made to the number of FTE positions authorized for the NDSU Extension Service, Northern Crops Institute, Upper Great Plains Transportation Institute, Main Research Center, Branch Research Centers, and Agronomy Seed Farm.
36. **National Guard service member, veteran, family, and survivor support program (Section 1 of House Bill No. 1101 (2019))** - This bill created Section 37-03-18 to require the Adjutant General to provide annual reports to the Budget Section regarding the income and expenditures made from the North Dakota National Guard service member, veteran family, and survivor support program and requires Budget Section approval for any expenditures from the fund that exceed \$500,000.
37. **Report from the governor on federal and other funds received (Section 3 of Senate Bill No. 2001 (2019))** - This bill requires the Governor's office to provide a report to the Budget Section regarding the source, amount, and purpose of any additional income from federal or other funds received. This report also was required in Section 4 of House Bill No. 1001 (2017).
38. **Department of Trust Lands investment performance (Section 6 of House Bill No. 1013 (2019))** - This bill created Section 15-02-08.1 to require the Department of Trust Lands to provide annual reports to the Budget Section regarding the investment performance of funds under its control.
39. **Consider specific criteria for actions, projects, and transfers (Section 15 of Senate Bill No. 2055 (2019))** - This bill created Section 54-35-02.9 to require the Budget Section to review specific criteria when considering an item before the Budget Section.

The following duties assigned to the Budget Section by law or by Legislative Management directive are scheduled to be addressed by the Budget Section at its December 2020 meeting:

1. **Report on specified commodities and services exempted from the procurement requirements of Section 54-44.4-02.2** - This section requires the director of OMB to report to the Budget Section in December of even-numbered years on specified commodities and services exempted by written directive of the director from the procurement requirements of Chapter 54-44.4.
2. **Review and report on budget data (Legislative Management directive)** - Pursuant to Legislative Management directive, the Budget Section is to review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the legislative organizational session (December 2020).

3. **District court reporters (Section 18 of House Bill No. 1002 (2019))** - This bill requires the judicial branch to study the need for 1 FTE court reporter position for each district court judgeship and to provide a report to the Budget Section by December 31, 2020.

The following duties assigned to the Budget Section by law or by Legislative Management directive did not require action by the Budget Section during the 2019-20 interim:

1. **Bank of North Dakota loans (Section 6-09-15.1)** - This section requires OMB to provide a report to the Budget Section regarding any loans obtained from the Bank of North Dakota when the balance in the state general fund is insufficient to meet legislative appropriations. The total principal of any loans may not exceed \$50 million.
2. **Investment in real property by the Board of University and School Lands (Section 15-03-04)** - This section provides Budget Section approval is required prior to the Board of University and School Lands purchasing, as sole owner, commercial or residential real property in North Dakota.
3. **Game and Fish Department land acquisitions (Section 20.1-02-05.1)** - This section requires Budget Section approval for Game and Fish Department land acquisitions of more than 10 acres or \$10,000.
4. **Reduction of the game and fish fund balance below \$15 million (Section 20.1-02-16.1)** - This section provides the Game and Fish Department can spend money in the game and fish fund within the limits of legislative appropriations; only to the extent the balance of the fund is not reduced below \$15 million, unless otherwise authorized by the Budget Section.
5. **Provision of contract services by the Life Skills and Transition Center (Section 25-04-02.2)** - This section provides, subject to Budget Section approval, the Life Skills and Transition Center may provide services under contract with a governmental or nongovernmental person.
6. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - This section provides state property in a city is exempt from special assessments levied for flood control purposes unless the governing body of the city requests waiver of the exemption and the exemption is completely or partially waived by the Budget Section. The exemption does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education.
7. **Termination of food stamp program (Section 50-06-05.1(16))** - This section provides, subject to Budget Section approval, DHS may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.
8. **Termination of energy assistance program (Section 50-06-05.1(18))** - This section provides, subject to Budget Section approval, DHS may terminate the energy assistance program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.
9. **Purchase or lease of aircraft by a state agency or entity of state government (Section 54-06-37)** - This section requires Budget Section approval for a state agency or other entity of state government to purchase or lease an aircraft without specific authorization from the Legislative Assembly. This section does not apply to aircraft purchased or leased by the Adjutant General's office or the University of North Dakota School of Aviation.
10. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective for which funding was provided by the Legislative Assembly.
11. **Acceptance of federal funds for a specific purpose or program which were not appropriated (Section 54-16-04.1(4))** - This section provides, upon approval by the Emergency Commission and Budget Section, the state may accept any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session for deposit into a special fund until the Legislative Assembly appropriates the funds.
12. **Cashflow financing (Section 54-27-23)** - This section provides to meet the cashflow needs of the state, OMB may borrow, subject to Emergency Commission approval, from special funds on deposit in the state treasury. However, the proceeds of any such indebtedness cannot be used to offset projected deficits in state finances unless first approved by the Budget Section. Additional cashflow financing, subject to certain limitations, must be approved by the Budget Section.



13. **Budget stabilization fund (Section 54-27.2-03)** - This section provides any transfers from the budget stabilization fund must be reported to the Budget Section.
14. **Purchases of "put" options (Section 54-44-16)** - This section requires OMB to report any purchases of "put" options to the Budget Section.
15. **Form of budget data (Section 54-44.1-07)** - This section requires the director of the budget to prepare budget data in the form prescribed by the Legislative Council and to present it to the Legislative Assembly at a time and place set by the Legislative Council. Drafts of proposed general and special appropriations Acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other Acts recommended by the governor for putting into effect the proposed financial plan must be submitted to the Legislative Council within 7 days after the day of adjournment of the organizational session.
16. **Objection to budget allotments or expenditures (Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment, an expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.
17. **Budget reduction due to initiative or referendum action (Section 54-44.1-13.1)** - This section provides, subject to Budget Section approval, the director of the budget may reduce state agency budgets by a percentage sufficient to cover estimated revenue reductions caused by initiative or referendum action.
18. **Requests by the Information Technology Department (ITD) to finance the purchase of software, equipment, or implementation of services (Section 54-59-05(4))** - This section requires ITD to receive Budget Section or Legislative Assembly approval before executing any proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of \$1 million. The department may finance the purchase of software, equipment, or implementation of services only to the extent the purchase amount does not exceed 7.5 percent of the amount appropriated to the department during that biennium.
19. **Extraterritorial workers' compensation insurance (Section 65-08.1-02)** - This section authorizes Workforce Safety and Insurance to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.
20. **Federal block grant hearings (House Concurrent Resolution No. 3001 (2019))** - This resolution authorizes the Budget Section, through September 30, 2021, to hold any required legislative hearings for federal block grants.
21. **Western Area Water Supply Authority loan payment (Section 10 of House Bill No. 1020 (2017))** - This section requires the State Water Commission to obtain Budget Section approval to make a payment to the Bank of North Dakota relating to a Western Area Water Supply Authority defaulted consolidation loan payment.
22. **SBHE tuition increases (Section 33 of House Bill No. 1003 (2019))** - This bill requires SBHE to obtain Budget Section approval of any tuition rate increases of more than 4 percent for the 2019-20 or 2020-21 academic years.
23. **Industrial Commission contingent FTE positions (Section 7 of House Bill No. 1014 (2019))** - This bill requires Budget Section approval for the Industrial Commission to spend \$229,544 to hire 2 FTE positions if the total number of oil wells capable of production and injection exceed 20,800.
24. **Theodore Roosevelt Presidential Library and Museum grant (Section 5 of Senate Bill No. 2001 (2019))** - This bill requires the Governor's office to provide a report to the Budget Section that includes the certification from a private entity that \$100 million in cash donations and binding pledged donations have been raised for the construction of a presidential library and museum and for grants to affected entities.
25. **Theodore Roosevelt Presidential Library and Museum loan (Section 8 of Senate Bill No. 2001 (2019))** - This bill requires the Governor's office to provide a report to the Budget Section within 30 days of applying for a loan for an endowment for the Theodore Roosevelt Presidential Library and Museum.
26. **Report regarding any transfers between line items in excess of \$50,000 (Section 11 of Senate Bill No. 2012 (2019))** - This section requires DHS to report to the Budget Section after June 30, 2020, on any transfers in excess of \$50,000 made during the 2019-21 biennium from line items within subdivisions 1, 2, and 3 to line items in subdivision 4 of Senate Bill No. 2012.
27. **State Water Commission expenditure of additional amounts that become available in the resources trust fund and the water development trust fund in excess of the 2019-21 biennium appropriation (Section 4 of Senate Bill No. 2020 (2019))** - This bill requires Budget Section approval for State Water Commission expenditure of funds that become available in the resources trust fund and the water development trust fund in excess of 2019-21 biennium appropriations.

28. **Western Area Water Supply Authority loan payment (Section 10 of House Bill No. 1020 (2017))** - This bill requires the State Water Commission to obtain Budget Section approval for a payment of a Western Area Water Supply Authority defaulted consolidation loan payment.
29. **Red River Valley Water Supply Project funding designations (Section 14 of Senate Bill No. 2020 (2019))** - The section requires the Budget Section to approve changes between funding designations for the Red River Valley Water Supply Project.

**OFFICE OF MANAGEMENT AND BUDGET  
2017-19 Biennium General Fund Revenues and Expenditures**

The Budget Section received the following report from OMB on the final 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
<b>Total beginning general fund balance - July 1, 2017</b>		<b>\$164,271,093</b>
Add		
General fund collections		4,913,448,662
<b>Total revenues available</b>		<b>\$5,077,719,755</b>
Less		
Legislative appropriations - One-time	(\$14,638,226)	
Legislative appropriations - Ongoing	(4,295,624,415)	
Authorized carryover from previous biennium	(99,271,093)	
2019-21 authority spent in 2017-19 pursuant to emergency clause	(106,000)	
Deficiency and supplemental appropriations	(115,560,181)	
Unspent authority	61,389,781	
<b>Total appropriations</b>		<b>(4,463,810,134)</b>
<b>General fund balance - June 30, 2019 - Before transfers</b>		<b>\$613,909,621</b>
Transfer to budget stabilization fund <sup>1</sup>		(548,010,854)
Other transfers and adjustments		(898,767)
<b>Ending general fund balance - June 30, 2019</b>		<b>\$65,000,000</b>

<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.

**2017-19 Biennium General Fund Turnback**

The Budget Section received a report from OMB on the 2017-19 biennium agency unspent general fund appropriation amounts (turnback). Unspent 2017-19 biennium general fund appropriation authority totaled approximately \$51.9 million. The Department of Public Instruction had turnback of \$12.4 million, which was a result of reduced state school aid spending due to lower than anticipated enrollment growth, and DHS had turnback of \$14.1 million, which primarily related to lower than anticipated cost and caseload levels. In addition to the turnback amounts, \$9.5 million of general fund appropriation authority for the Theodore Roosevelt Presidential Library and Museum project was canceled on December 31, 2018.

**2017-19 Biennium Capital Construction Carryover**

The Budget Section received a report from OMB on 2017-19 biennium capital construction carryover. The Office of Management and Budget reported funding of \$57.1 million for the 2017-19 biennium was continued into the 2019-21 biennium. Of the total amount, \$31.4 million was for the continuation of federal funding authority for the National Guard Fargo Readiness Center project.

**2019-21 Status of the General Fund**

At each Budget Section meeting, a representative of OMB reviewed the status of the state general fund and revenue collections for the 2019-21 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2020, and reflecting the 2019 legislative forecast for the remainder of the 2019-21 biennium:

Unobligated general fund balance - July 1, 2019		\$65,000,000
Balance obligated for authorized carryover from the 2017-19 biennium		130,404,813
Total beginning general fund balance - July 1, 2019		\$195,404,813
Add		
General fund collections to date	\$3,276,912,351	
Remaining forecasted general fund collections	1,622,758,285	
Total estimated general fund collections		4,899,670,636
Total estimated revenues available		\$5,095,075,449
Less		
Legislative appropriations - One-time	(\$48,639,068)	
Legislative appropriations - Ongoing	(4,794,924,098)	
Authorized carryover from previous biennium	(130,404,813)	
2019-21 biennium authority spent in 2017-19 pursuant to emergency clause	106,000	
Total appropriations		(4,973,861,979)
Estimated ending general fund balance - June 30, 2021 - Before transfers		\$121,213,470
Transfer to budget stabilization fund <sup>1</sup>		0
Estimated ending general fund balance - June 30, 2021		\$121,213,470

<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. The budget stabilization fund is estimated to be at the maximum balance at the end of the 2019-21 biennium.

The Budget Section was informed as of August 2020, the balance in the budget stabilization fund was \$726.9 million, the balance in the legacy fund was \$7.0 billion, the balance in the foundation aid stabilization fund was \$376.0 million, the balance in the tax relief fund was \$290.5 million, and the unobligated balance in the strategic investment and improvements fund was \$94.9 million.

### 2019-21 Biennium Revised Revenues

The Budget Section received OMB's September 2020 revised 2019-21 biennium general fund revenue forecast. The revised revenue forecast includes an increase of \$88.3 million of general fund revenue compared to the 2019 legislative forecast for the 2019-21 biennium. The following is a summary of the revised revenue forecast:

Tax Type	2019 Legislative Forecast	September 2020 Revised Revenue Forecast	Increase (Decrease)
Sales and use taxes	\$1,868,262,000	\$1,771,298,564	(\$96,963,436)
Motor vehicle excise tax	249,951,800	225,871,814	(24,079,986)
Individual income tax	803,305,000	792,937,603	(10,367,397)
Corporate income tax	132,268,000	178,960,333	46,692,333
Insurance premium tax	72,944,050	94,520,219	21,576,169
Oil and gas taxes	400,000,000	400,000,000	0
Gaming tax	7,511,200	28,304,238	20,793,038
Lottery	12,245,000	10,222,500	(2,022,500)
Cigarette and tobacco tax	47,838,000	48,670,505	832,505
Wholesale liquor tax	18,703,000	18,268,734	(434,266)
Coal conversion tax	41,438,000	42,398,724	960,724
Mineral leasing fees	38,000,000	29,368,017	(8,631,983)
Departmental collections	91,521,566	78,964,720	(12,556,846)
Interest income	10,000,000	28,272,315	18,272,315
State Mill transfer	13,400,000	10,923,841	(2,476,159)
Bank of North Dakota transfer	140,000,000	140,000,000	0
Legacy fund transfer	100,000,000	235,630,000	135,630,000
Tax relief fund transfer	8,600,000	8,600,000	0
Strategic investment and improvements fund transfer	764,400,000	764,400,000	0
Gas tax administration	1,991,024	1,991,418	394
Miscellaneous revenue	581,000	1,643,059	1,062,059
<b>Total revenues</b>	<b>\$4,822,959,640</b>	<b>\$4,911,246,604</b>	<b>\$88,286,964</b>

### 2019-21 Oil Tax Revenue Allocations

The Budget Section received OMB's revised 2019-21 biennium oil tax revenue forecast in September 2020. The revised estimated oil tax revenue is \$1.4 billion less than the 2019 legislative forecast. The revised forecast estimates an average North Dakota price of \$32 per barrel of oil the rest of the biennium. The following schedule compares total oil tax allocations under the revised forecast:

	2019-21 Biennium Legislative Forecast	2019-21 Biennium Revised Revenue Forecast	Increase (Decrease)
Total oil tax allocations	\$4,851,193,101	\$3,415,479,818	(\$1,435,713,283)

### Preliminary 2021-23 Revenue Forecast

The Budget Section received the OMB preliminary revenue forecast for the 2021-23 biennium. The following schedule details the preliminary 2021-23 biennium general fund revenue forecast with the revised 2019-21 biennium general fund revenue forecast for major tax types:

	2019-21 Biennium Revised Revenue Forecast	2021-23 Biennium Preliminary Forecast	Increase (Decrease)
Sales and use taxes	\$1,771,298,564	\$1,700,264,000	(\$71,034,564)
Motor vehicle excise tax	225,871,814	237,728,000	11,856,186
Individual income tax	792,937,603	782,127,000	(10,810,603)
Corporate income tax	178,960,333	189,033,000	10,072,667
Total	\$2,969,068,314	\$2,909,152,000	(\$59,916,314)

The preliminary 2021-23 biennium revenue forecast prepared by OMB includes estimated oil tax revenue of \$3.0 billion, \$382.8 million less than the 2019-21 biennium revised forecast and \$1.8 billion less than the 2019 legislative forecast. The preliminary 2021-23 biennium revenue forecast estimates an average North Dakota oil price of \$34.50 per barrel in the 1<sup>st</sup> year of the 2021-23 biennium and to \$36 per barrel in the 2<sup>nd</sup> year of the biennium. Oil production is forecasted to remain at 1.25 million barrels per day through the end of the of 2021-23 biennium.

### Fiscal Irregularities

Pursuant to Section 54-14-03.1, the Budget Section received reports from OMB on irregularities in the fiscal practices of the state. Fiscal irregularities include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The Office of Management and Budget identified the following fiscal irregularities:

Agency	Description	Amount
<b>June 2019</b>		
Department of Human Services	Workload adjustment	\$8,260
Information Technology Department	Workload adjustment	\$2,394
Department of Human Services	Equity adjustment	\$1,000
Department of Commerce	Workload adjustment	\$4,000
Department of Human Services	Workload adjustment	\$980
Governor's office	Workload adjustment	\$1,500
Department of Human Services	Workload adjustment	\$1,300
Department of Human Services	Equity adjustment	\$1,400
Department of Commerce	Workload adjustment	\$543
Department of Commerce	Workload adjustment	\$797
Department of Human Services	Equity adjustment	\$996
Department of Human Services	Workload adjustment	\$2,835
Securities Department	Equity increase	\$1,655
Judicial branch	Workload adjustment	\$1,074
Department of Human Services	Workload adjustment	\$906
Department of Trust Lands	Severance package	\$14,840
<b>September 2019</b>		
North Dakota Vision Services - School for the Blind	Summer teaching contracts	\$17,973
North Dakota Vision Services - School for the Blind	Balance of contract for employees who resigned or retired	\$13,715
Attorney General's office	Employee reclassification	\$1,495
Tax Department	Employee reclassification	\$1,696
Judicial branch	Workload adjustment	\$529
Bank of North Dakota	Promotions and workload adjustments	\$1,381
Department of Commerce	Workload increase	\$4,200
State Historical Society	Retroactive workload adjustment	\$500
Attorney General's office	Promotion	\$800
Department of Human Services	Employee reclassification	\$802
Department of Human Services	Temporary workload increases	\$2,367
Department of Human Services	Equity increases	\$8,686
Department of Human Services	Employee reclassification	\$1,025
Office of Management and Budget	Severance package	\$26,106
Department of Human Services	Reduction in force	\$71,932
Public Service Commission	Reduction in force	\$2,000

Agency	Description	Amount
<b>December 2019</b>		
Department of Transportation	Temporary workload adjustment	\$5,000
State Treasurer's office	Temporary workload adjustments for three employees	\$2,250
Commission on Legal Counsel for Indigents	Temporary workload adjustment	\$750
Department of Human Services	Equity adjustment	\$1,365
Parks and Recreation Department	Temporary workload adjustments for three employees	\$4,500
Attorney General's office	Equity adjustment	\$1,000
Department of Human Services	Equity adjustments for two employees	\$5,922
Department of Human Services	Workload increase	\$700
<b>March 2020</b>		
Department of Career and Technical Education	Temporary workload adjustment	\$600
Secretary of State's office	Workload increase	\$1,635
Department of Human Services	Temporary workload increase	\$900
Department of Human Services	Workload increases	\$1,139
Department of Corrections and Rehabilitation	Contract adjustments	\$2,806
Department of Commerce	Temporary workload increase	\$827
Parks and Recreation Department	Temporary workload increase	\$772
State Department of Health	Severance pay	\$31,622
<b>June 2020</b>		
Attorney General's office	Increase in responsibilities	\$1,477
Attorney General's office	Duties performed while on unpaid leave	\$819
Retirement and Investment Office	Retroactive pay	\$6,948
Department of Human Services	Workload adjustments for six employees	\$10,510
Department of Corrections and Rehabilitation	Workload adjustment	\$944
<b>September 2020</b>		
North Dakota Vision Services - School for the Blind	Payment of contract after employee resignation	\$7,332
Highway Patrol	Payout of excess annual leave	\$7,756
North Dakota Vision Services - School for the Blind	Work days in excess of contract	\$6,742
Department of Career and Technical Education	Temporary workload adjustments	\$3,027
Department of Human Services	Additional payment for licensure	\$1,196
Department of Human Services	Workload increase	\$2,260
Council on the Arts	Temporary workload adjustments	\$2,550

### Tobacco Settlement Proceeds

Pursuant to Section 54-44-04, the Budget Section received reports on tobacco settlement proceeds received by the state. The Office of Management and Budget reported for the 2019-21 biennium to date through June 2020, approximately \$21.4 million had been received by the state and deposited in the tobacco settlement trust fund. The entire \$21.4 million was transferred to the community health trust fund. Payments received by the state and deposited in the tobacco settlement trust fund since December 1999 total \$517.5 million.

Prior to the 2017-19 biennium, tobacco settlement funds were distributed as follows--10 percent to the community health trust fund, 45 percent to the common schools trust fund, and 45 percent to the water development trust fund. The tobacco settlement payments during the 2017-19 biennium were distributed 55 percent to the community health trust fund, 0 percent to the common schools trust fund, and 45 percent to the water development trust fund. Beginning with the 2019-21 biennium, all tobacco settlement proceeds are allocated to the community health trust fund.

### Voluntary Separation Incentive Program

The Office of Management and Budget reported to the Budget Section in June 2019 regarding the status of the voluntary separation incentive program. The Office of Management and Budget reported from January 2019 through May 2019, 35 state employees received severance payments totaling \$616,823.

### Deficiency Appropriations

The Office of Management and Budget reported to the Budget Section in September 2020 regarding anticipated deficiency appropriations for the 2019-21 biennium. The Office of Management and Budget reported five agencies anticipate requesting deficiency appropriations totaling \$34.2 million from the 2021 Legislative Assembly. The Office of Management and Budget anticipates requesting \$400,000 for expenditures related to a federal voting lawsuit; the Adjutant General anticipates requesting \$29.1 million for disaster costs; the Attorney General anticipates requesting \$175,000 for a lawsuit related to corporate farming laws; the Tax Department anticipates requesting \$4 million for the homestead tax credit and disabled veterans' tax credit programs; and NDSU anticipates requesting \$475,000 for a lawsuit relating to the A. Glenn Hill Center construction project.

### Federal Grant Applications

The Office of Management and Budget reported quarterly to the Budget Section regarding state agencies applying for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. Section 54-27-27 requires OMB to present at each meeting of the Budget Section reports received from state agencies, other than entities under the control of SBHE, which have applied for federal grants estimated to be \$25,000 or more. The Office of Management and Budget reported the following agencies applied for federal grants estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount
<b>June 2019</b>		
Adjutant General's office	October 2019 - September 2020	\$1,200,000
Adjutant General's office	July 2019 - March 2022	\$1,326,425
Department of Agriculture	July 2019 - June 2021	\$310,660
Department of Public Instruction	October 2019 - September 2024	\$500,000
Department of Public Instruction	July 2019 - July 2024	\$35,000,000
Department of Transportation	April 2019 - June 2023	\$3,670,342
Department of Transportation	October 2019 - November 2025	\$40,000,000
<b>September 2019</b>		
Industrial Commission	October 2019 - October 2024	\$51,092
Game and Fish Department	October 2019 - September 2020	\$40,000
Department of Transportation	November 2019 - September 2026	\$22,968,650
<b>December 2019</b>		
Department of Human Services	January 2020 - December 2022	\$20,850,542
Attorney General's office	January 2020 - December 2022	\$442,908
Attorney General's office	August 2019 - September 2021	\$376,010
<b>March 2020</b>		
State Historical Society	September 2020 - August 2021	\$224,220
Department of Transportation	Fall 2020 - Project completion	\$45,000,000
<b>June 2020</b>		
Office of Management and Budget	June 2020 - September 2022	\$5,932,707
Attorney General's office	October 2020 - September 2023	\$270,000
Attorney General's office	October 2020 - September 2021	\$100,000
Attorney General's office	January 2020 - January 2022	\$2,082,871
Attorney General's office	October 2020 - September 2021	\$100,000
Attorney General's office	October 2020 - September 2023	\$200,000
Department of Human Services	May 2020 - April 2021	\$300,000
Department of Human Services	May 2020 - September 2021	\$2,000,000
Department of Human Services	May 2020 - September 2021	\$800,000
Department of Human Services	Date awarded - June 2020	\$160,572
Department of Human Services	Date awarded up to 3 years	\$1,000,000
Department of Human Services	July 2020 - June 2021	\$200,000
Department of Career and Technical Education	July 2020 - June 2025	\$9,000,000
Housing Finance Agency	July 2019 - June 2020	\$45,055
Housing Finance Agency	October 2019 - September 2021	\$94,000
Department of Transportation	3 years from when funding becomes available	\$30,114,650
<b>September 2020</b>		
Department of Public Instruction	2020 through 2025	\$2,100,000
Industrial Commission	Up to 5 years	\$26,157

The Office of Management and Budget reported the following agencies were awarded federal grants of \$25,000 or more:

Agency	Time Period of Grant	Amount
<b>June 2019</b>		
Attorney General's office	October 2018 - September 2020	\$945,771
<b>September 2019</b>		
Department of Agriculture	July 2019 - June 2021	\$310,658
Department of Transportation	July 2019 - June 2021	\$6,511,000
<b>December 2019</b>		
Attorney General's office	January 2020 - December 2022	\$442,908
Attorney General's office	August 2019 - September 2021	\$376,010
Game and Fish Department	October 2019 - September 2020	\$40,000
<b>March 2020</b>		
Department of Transportation	Not reported	\$241,687
<b>June 2020</b>		
Office of Management and Budget	June 2020 - September 2022	\$5,932,707
Department of Human Services	May 2020 - September 2021	\$2,000,000

Agency	Time Period of Grant	Amount
Department of Human Services	May 2020 - April 2021	\$300,000
Department of Human Services	Date awarded - June 2020	\$160,572
<b>September 2020</b>		
Department of Human Services	Date awarded up to 3 years	\$889,285
Department of Commerce	July 2019 - June 2022	\$694,317
Department of Transportation	January 2021 - December 2024	\$17,250,000

### Prepayment of Planning Fees - Highway Patrol Training Academy

The Office of Management and Budget reported to the Budget Section regarding a request to use funds from the preliminary planning revolving fund for prepayment of consulting and planning fees for capital improvements pursuant to Section 54-27-22. Money in the revolving fund is available for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. Any funds distributed for approved projects will be repaid to the capital improvements preliminary planning revolving fund if the project is approved and funds are appropriated for the project. The Office of Management and Budget recommended up to \$80,000 from the revolving fund be used by the Highway Patrol for prepayment of planning fees for the construction of a new public safety training facility with options to locate additional entities in the facility or for the renovation of the existing law enforcement training academy facility. House Bill No. 1011 (2019) directed the Highway Patrol to develop alternatives to relocate the housing and classroom portions of the law enforcement training academy. The Budget Section approved the request. As of September 2020 the balance of the preliminary planning revolving fund is \$94,000.

### State Board of Higher Education Project Variance Reports

The Office of Management and Budget reported to the Budget Section regarding capital project variance reports provided from SBHE to OMB pursuant to Section 15-10-47. Section 15-10-47 provides whenever any new construction, renovation, or repair, valued at more than \$250,000, is underway on the campus of an institution of higher education under the control of SBHE, the board must provide OMB with semiannual project variance reports. The reports must include:

- Name or description of the project.
- Expenditures authorized by the Legislative Assembly.
- Amount of the original contract.
- Amount of any change orders and description.
- Amount of any potential or anticipated change orders.
- Sum of the original contract, change orders, and potential or anticipated change orders and the amount by which that sum varies from the expenditures authorized by the Legislative Assembly.
- Total expenditures to date.
- Scheduled date of completion as noted in the original contract and the latest available scheduled date of completion.
- List of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project.

In October 2020, OMB reported project variance reports for University System projects as of June 30, 2020, as follows:

	Number of Projects	Project Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
<b>Projects Specifically Authorized by the Legislative Assembly</b>				
Dakota College at Bottineau	6	\$14,148,194	\$876,695	\$13,271,499
Dickinson State University	8	\$4,000,000	\$934,235	\$3,065,765
Lake Region State College	5	\$3,528,932	\$3,004,466	\$524,466
Minot State University	10	\$2,800,000	\$2,248,560	\$551,440
North Dakota State College of Science	12	\$13,298,000	\$13,137,940	\$160,060
North Dakota State University	12	\$328,872,709	\$176,124,731	\$152,747,978
University of North Dakota	64	\$254,300,000	\$100,433,677	\$153,866,323
Valley City State University	23	\$55,700,000	\$33,088,322	\$22,611,678
<b>Projects Approved by the State Board of Higher Education</b>				
Bismarck State College	1	\$700,000	\$545,610	\$154,390
Minot State University	2	\$6,805,000	\$6,805,000	\$0

	Number of Projects	Project Authorization	Current Contract Amounts	Contract (Over)/Under Authorization
North Dakota State University	1	\$2,500,000	\$2,218,285	\$281,715
University of North Dakota	5	\$9,213,000	\$4,085,685	\$5,127,315
Williston State College	2	\$11,500,000	\$7,867,789	\$3,632,211

### GOVERNOR'S OFFICE Additional Federal or Other Funds Received

The Governor's office reported to the Budget Section on the source, amount, and purpose of additional federal or other funds received during the 2019-21 biennium pursuant to Section 3 of Senate Bill No. 2001 (2019). The report indicated the following additional funds were received by the Governor's office through September 2020:

Source	Amount	Purpose
Greater North Dakota Association	\$15,000	Costs of holding the January 2020 State of the State address in Grand Forks
Dakota Medical Foundation	\$60,000	Costs of the Office of Recovery Reinvented
Dakota Medical Foundation	\$20,000	Costs of the Office of Recovery Reinvented
Bush Foundation	\$25,000	Costs of Governor's Summit on Innovative Education
Dakota Medical Foundation	\$10,200	Costs of the Office of Recovery Reinvented
Dakota Medical Foundation	\$60,000	Costs of the Office of Recovery Reinvented

### UNIVERSITY SYSTEM Campus Improvements

The University System requested Budget Section approval relating to the following capital construction project requests for campus improvements:

#### Dickinson State University

- **Softball field project** - The Budget Section **did not approve** a request from Dickinson State University pursuant to Section 15-10-12.1 to construct a new softball field with an estimated cost of \$913,000. The project would have used \$304,333 of institution extraordinary repairs funding and \$608,667 of donated funds.

#### North Dakota State University

- **Outdoor track project** - Pursuant to Section 15-10-12.1, the Budget Section approved a \$5 million outdoor track facility project at NDSU. The project will be paid with private donations.

#### Dickinson State University

- **Pulver Hall project** - Pursuant to Section 48-01.2-25, the Budget Section authorized the project scope of the Dickinson State University Pulver Hall project to increase from \$4,000,000 to \$4,284,500 to allow for the replacement of air conditioning units. The source of funding for the increase is institution extraordinary repairs funding and required matching funds.

### Local Funds Report

Pursuant to Section 15-10-12.3, the Budget Section received a report on sources of funds received for construction projects of entities under the control of SBHE. The report indicated four projects--the seed conditioning plants at two NDSU Research Extension Service Centers, The Dickinson State University Theodore Roosevelt Center Project, and the Valley City State University hillside slope stabilization project, were authorized in prior bienniums and continued into the 2017-19 biennium.

The hillside slope stabilization project was completed in June 2018 and the seed conditioning plants were anticipated to be completed by June 2020. The Theodore Roosevelt Center Project was canceled in December 2018.

### ANNUAL FULL-TIME EQUIVALENT POSITION REPORT North Dakota State University Main Research Center

The NDSU Main Research Center reported to the Budget Section regarding FTE position adjustments made at the Main Research Center pursuant to Section 15-12.1-05. The Main Research Center added 2.45 FTE positions between December 1, 2018, and November 30, 2019, resulting in a total of 241.25 FTE positions as of November 30, 2019.

#### Branch Research Centers and Agronomy Seed Farm

The branch research centers reported no changes in FTE positions were made between December 1, 2018, and November 30, 2019, maintaining a total of 109.50 FTE positions as of November 30, 2019. The Agronomy Seed Farm reported no changes in FTE positions were made between December 1, 2018, and November 30, 2019, maintaining a total of 3 FTE positions as of November 30, 2019.



**North Dakota State University Extension Service**

The NDSU Extension Service reported to the Budget Section regarding the FTE position adjustments made at the Extension Service pursuant to Section 11-38-12. The Extension Service reduced 2.90 FTE positions between December 1, 2018, and November 30, 2019, resulting in a total of 240.75 FTE positions as of November 30, 2019.

**Northern Crops Institute**

The Northern Crops Institute reported to the Budget Section regarding the FTE position adjustments made at the Northern Crops Institute pursuant to Section 11-38-12. The Northern Crops Institute added 2 FTE positions between December 1, 2018, and November 30, 2019, resulting in a total of 14.80 FTE positions as of November 30, 2019.

**Upper Great Plains Transportation Institute**

The Upper Great Plains Transportation Institute reported to the Budget Section regarding the FTE position adjustments made for the Upper Great Plains Transportation Institute pursuant to Section 11-38-12. The Upper Great Plains Transportation Institute did not adjust any positions between December 1, 2018, and November 30, 2019, resulting in a total of 43.88 FTE positions as of November 30, 2019.

**STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION  
Status Report**

The State Board of Agricultural Research and Education submitted a report to the Budget Section in June 2020 regarding the status of board activities pursuant to Section 15-12.1-17(10).

**ADJUTANT GENERAL**

**National Guard Service Member, Veteran, Family, and Survivor Support Program**

The Budget Section received a report pursuant to Section 37-03-18 regarding the National Guard Service Member, Veteran, Family, and Survivor Support Program. The program allows the Adjutant General to accept and expend funds from the North Dakota National Guard Foundation or any similar foundation, offered or tendered, for the benefit of the North Dakota National Guard Service Member, Veteran, Family, and Survivor Support Program. Any funds received are deposited in a special fund and are appropriated on a continuing basis to the Adjutant General to be used for the program. Expenditures from the fund may not exceed \$500,000 per biennium unless approved by the Emergency Commission and the Budget Section.

The Adjutant General reported in September 2020, \$2,500 of grant funding was received to address veterans' needs relating to the Coronavirus (COVID-19). Of this amount, \$885 was used to purchase masks and other sanitizing items which were used at events supporting veterans.

**DEPARTMENT OF COMMERCE  
Renaissance Fund Organizations Annual Audits**

The Department of Commerce reported on the annual audits of renaissance fund organizations (RFOs) pursuant to Section 40-63-07(9). The department reported 58 cities have a renaissance zone, 8 of which have established RFOs. The department reported approximately \$19.9 million has been invested in RFOs and \$9.9 million of tax credits have been claimed. The department reported of the \$536,134 remaining tax credits available as of September 2020, \$250,000 has been reserved for the Hope RFO, \$17,000 has been reserved for the Mayville RFO, and the remaining credits remain unclaimed.

The department reported the following tax credit summary as of September 2020:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
Category 1 (0 to 5,000 population)	\$1,043,366	\$586,366 <sup>1</sup>	\$267,000	\$190,000
Category 2 (5,001 to 30,000 population)	250,000	250,000 <sup>2</sup>		
Category 3 (Over 30,000 population)	9,206,634	9,127,500 <sup>3</sup>		79,134
Total	\$10,500,000	\$9,963,866	\$267,000	\$269,134

<sup>1</sup>Category 1 cities - Casselton (\$37,500), Hazen (\$15,500), Mayville (\$210,650), and Hope (\$322,716).

<sup>2</sup>Category 2 cities - Jamestown (\$150,000) and West Fargo (\$100,000).

<sup>3</sup>Category 3 cities - Fargo (\$9,127,500).

**STATE TREASURER  
Outstanding Warrants and Checks**

The Budget Section received reports from the State Treasurer regarding warrants and checks outstanding for more than 90 days and less than 3 years pursuant to Section 54-11-01. Section 54-11-01 requires the State Treasurer to

report to the Budget Section, within 90 days of the beginning of each fiscal year, all warrants and checks outstanding for more than 90 days and less than 3 years. The State Treasurer provided reports to the Budget Section in September 2019 and September 2020. The Budget Section was informed items reported may be the result of money that has not been received by the proper recipient or checks that have not been cashed. Annually, checks more than 3 years old are transferred to the Department of Trust Lands as unclaimed property.

The State Treasurer reported in September 2019 the total number of outstanding checks in state fiscal year 2019 decreased by 8.5 percent compared to state fiscal year 2018, while the total dollar amount of outstanding checks decreased by 11.2 percent during this time period. The State Treasurer reported the total amount of outstanding checks for fiscal year 2019 was \$2.1 million. The State Treasurer reported 3,931 outstanding checks from fiscal year 2016 totaling \$353,866 would be transferred to the Department of Trust Lands' Unclaimed Property Division in October 2019.

The State Treasurer reported in September 2020 the total dollar amount of outstanding checks increased by 10 percent from fiscal year 2019 to fiscal year 2020. The State Treasurer reported 4,461 checks totaling \$381,723 issued in fiscal year 2017 will be transferred to the Unclaimed Property Division in October 2020. As of September 2020, there were 16,767 outstanding checks totaling \$7.1 million issued during fiscal years 2018, 2019, and 2020.

## **DEPARTMENT OF TRUST LANDS**

### **State Agency Unclaimed Property**

The Budget Section received reports from the Department of Trust Lands regarding state agencies that have not submitted a claim for unclaimed property belonging to that agency pursuant to Section 47-30.1-24.1. The North Dakota Uniform Unclaimed Property Act has been in effect since 1975, and since that time, North Dakota state agencies have been reported as being owners of unclaimed property. The 2003 Legislative Assembly enacted Section 47-30.1-24.1 in an effort to resolve the issue of state agency unclaimed property. Section 47-30.1-24.1 provides that within 1 year of receipt of state agency property, the administrator of unclaimed property shall notify the agency by certified mail. The Commissioner of University and School Lands is to present a report to the Budget Section identifying every state agency that has not submitted a claim for property belonging to that agency within 1 year of the receipt of the date of the certified mail receipt, and upon approval of the Budget Section, the agency relinquishes its right to recover its property.

The Department of Trust Lands reported during the 2019-21 interim, its Unclaimed Property Division identified 13 state agencies with unclaimed properties with a total value of \$10,171 as of June 2019, and 16 state agencies with unclaimed properties with a total value of \$12,997 as of June 2020.

The Budget Section, pursuant to Section 47-30.1-24.1, approved the lists of state agencies relinquishing rights to recover unclaimed property in June 2019 and in June 2020.

### **Investment Performance**

The Budget Section received reports from the Department of Trust Lands in September 2019 and September 2020 regarding the investment of assets under the control of the Board of University and School Lands. The department reported as of June 2020, approximately \$5.7 billion of assets were under the control of the board. The net return for the permanent trust funds as of June 30, 2020, was negative 1.95 percent for the prior year compared to a benchmark of 2.34 percent, 2.75 percent for the prior 3 years compared to a benchmark of 4.78 percent, and 3.37 percent for the prior 5 years compared to a benchmark of 4.8 percent. As of June 30, 2020, the net return on investments for the strategic investment and improvements fund was 1.17 percent for the prior 6 months compared to a benchmark of 1.73 percent and 2.42 percent for the prior year compared to a benchmark of 2.91 percent. In fiscal year 2020, the department paid \$22.3 million, or 46.1 basis points, of fund management fees to private entities for managing approximately \$4.9 billion of the \$5.7 billion of assets under the control of the board.

## **JOB SERVICE NORTH DAKOTA**

### **Status of the Unemployment Trust Fund and the Modified Average High-Cost Multiplier**

The Budget Section received a report in June 2020 from Job Service North Dakota on the status of the unemployment trust fund and the targeted modified average high-cost multiplier pursuant to Section 52-02-17. As of December 31, 2019, the balance of the unemployment trust fund was \$215 million, \$42 million more than the target balance of \$173 million. The average high-cost multiplier for the period was 1.24, 0.24 above the projected target of 1.0.

Job Service North Dakota reported the COVID-19 pandemic has caused unemployment claims to significantly increase. Job Service North Dakota is projecting the need to use \$410 million of federal Coronavirus Relief Fund dollars to maintain the fund's balance. After the projected transfers from the Coronavirus Relief Fund, the balance of the trust fund is estimated to be \$178 million on December 31, 2020.

## **DEPARTMENT OF HUMAN SERVICES**

### **Transfers in Excess of \$50,000**

The Budget Section received a report from DHS regarding transfers in excess of \$50,000 pursuant to Sections 10 and 11 of Senate Bill No. 2012 (2019). Through September 2020, transfers have been made to move medical claims and data entry FTE positions from the Management Division to the Program and Policy Division. Other transfers of FTE positions have been made to address department needs.

## **LEGACY AND BUDGET STABILIZATION FUND**

### **Advisory Board Report**

The Budget Section received reports from the Legacy and Budget Stabilization Fund Advisory Board regarding the investment policies for the legacy fund and budget stabilization fund pursuant to Section 21-10-11. Section 21-10-11 requires the advisory board to provide at least semiannual reports to the Budget Section regarding asset allocation and investment policies developed for the legacy fund and budget stabilization fund as well as recommendations presented to the State Investment Board regarding investment of funds in the legacy fund and budget stabilization fund.

### **Legacy Fund**

The Legacy and Budget Stabilization Fund Advisory Board reported as of March 31, 2020, the market value of the legacy fund was \$6.15 billion. Through April 30, 2020, the net earnings in the legacy fund totaled \$1.32 billion from inception, including \$1.09 billion of realized earnings based on the definition of earnings in Section 21-10-12. As of July 31, 2020, earnings of the legacy fund eligible for transfer to the general fund at the end of the 2019-21 biennium are \$339 million. The unaudited fund performance for the year ended March 31, 2020, was (4.21) percent compared to a target return of (2.69) percent. The board reported that during the 5-year period ended March 31, 2020, the return was 3.52 percent compared to a target return of 3.35 percent.

### **Budget Stabilization Fund**

As of March 2020, the market value of the budget stabilization fund was \$714.3 million. The Legacy and Budget Stabilization Fund Advisory Board reported the unaudited investment returns, net of fees, averaged 1.15 percent during the 5 years ended March 31, 2020, compared to a policy benchmark of 1.88 percent. Unaudited fund performance for the year ended March 31, 2020, net of fees, was (0.37) percent compared to a policy benchmark of 4.5 percent. The fund is estimated to be at its maximum balance of \$726.5 million on June 30, 2021.

## **HOUSING FINANCE AGENCY**

### **Housing Incentive Fund Update**

Pursuant to Section 54-17-40, the Budget Section received a report from the Housing Finance Agency regarding the housing incentive fund. The 2019 Legislative Assembly allocated \$7.5 million for distributions from the housing incentive fund. Application rounds were held in September 2019 and April 2020 and six projects were committed funding. Four projects are for new senior housing and the remaining projects are for rehabilitation of senior and multifamily housing facilities. The projects will create 250 new housing units and preserve 128 existing units.

## **STATE FIRE MARSHAL**

### **Fire Department Funding Report**

Pursuant to Section 18-04-02, the State Fire Marshal reported to the Budget Section expenditures by certified fire departments, district funds received from the insurance tax distribution fund, and reserve fund balances. The State Fire Marshal reported on or before October 31 of each year, a fire department must file a certificate of existence to the State Fire Marshal. The State Fire Marshal reported funds distributed from the insurance tax distribution fund help communities maintain fire services with equipment, operations, buildings, vehicles, and other necessities. The State Fire Marshal reported 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. The report must identify the purpose of any committed reserve balance and anticipated time period for spending the committed reserves. 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. The State Fire Marshal reported to be eligible, fire departments from cities, townships, or fire districts must be in operation for at least 8 months.

The State Fire Marshal reported 368 fire departments received a total of \$7,120,918 of distributions in 2017. A total of \$7,117,781 was distributed in 2018 but 2 fire departments did not meet reporting requirements and did not receive a distribution. Ninety-nine fire departments did not report on items or services purchased with the funds and 10 departments did not report on amounts or how funds were spent.

## HUB CITY REPORTS

The Budget Section received reports from hub cities in December 2019 regarding each city's use of funds received from hub city allocations from the oil and gas gross production tax under Section 57-51-15. Reports were received from Williston, Dickinson, and Minot.

### DEPARTMENT OF CORRECTIONS AND REHABILITATION

#### Inmate Report

Pursuant to Section 54-23.3-11, the Budget Section received annual reports on the DOCR's prison population management plan, inmate admissions, and the number of inmates not admitted after sentencing. The department reported in September 2019, December 2019, and September 2020. The maximum operational capacity for male inmates is 1,624 while the maximum operational capacity for female inmates is 224. The department reported in September 2020 both male and female inmate populations are below capacity. However, this is the result of the department deferring inmates to county jails to maintain adequate space in department facilities due to COVID-19. The department requested federal coronavirus relief funds to reimburse local correctional centers for housing inmates denied admission to department facilities.

### INDUSTRIAL COMMISSION

#### Abandoned Oil and Gas Well Plugging and Site Reclamation Fund

Pursuant to Section 38-08-04.5, the Budget Section received a report on the balance of the abandoned oil and gas well plugging and site reclamation fund and expenditures. The Industrial Commission reported the 2019-21 biennium beginning balance in the fund was \$22.1 million. As of June 30, 2020, the estimated fund balance was \$26.4 million, reflecting 2019-21 biennium revenues through June 2020 of \$8.0 million and estimated expenditures through June 2020 of \$3.7 million.

#### Actions With a Fiscal Impact of Greater than \$20 Million

Pursuant to Section 54-17-42, the Budget Section received a report regarding the effect on state revenues and expenditures of any Industrial Commission order, regulation, and policy estimated to have a fiscal impact in excess of \$20 million during a biennium. The Industrial Commission reported natural gas capturing rules adopted by the commission are estimated to have a \$26.5 million positive impact on state revenues.

### NORTH DAKOTA OUTDOOR HERITAGE ADVISORY BOARD

#### Activities to Date

Pursuant to Section 54-17.8-07, the North Dakota Outdoor Heritage Advisory Board reported to the Budget Section a summary of the board's activities. In September 2020, the board reported the fund received \$10,872,753 of oil and gas tax collections during the 2017-19 biennium and \$7,574,097 during the 2019-21 biennium to date. The board reported the 2019-21 biennium funding for the North Dakota outdoor heritage fund is limited to \$15,000,000. Sixteen grant rounds have been held since 2013, resulting in \$47,306,829 being awarded to 168 projects throughout North Dakota.

### STATUS OF CONTINUING APPROPRIATIONS

The Budget Section received reports from representatives of agencies regarding continuing appropriations authorized for their agency. Reports included information regarding the revenues, expenses, and justification for each continuing appropriation. Reports were received regarding the following funds:

Agency	Fund
Attorney General's office	Assets forfeiture fund Attorney General refund fund Lottery operating fund Twenty-four seven sobriety program fund Special operations team reimbursement fund Multijurisdictional drug task force grant fund
Tax Department	Multistate tax audit fund

### THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

#### Investment of Oil and Gas Tax Receipts

Pursuant to Section 57-51.2-02, the Three Affiliated Tribes of the Fort Berthold Reservation reported to the Budget Section fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects completed by the Three Affiliated Tribes using oil and gas tax receipts. Fiscal year 2019 oil tax revenues totaled \$254.8 million. A portion of these revenues was used for various infrastructure projects, including an interpretive center, a community building, a wellness outreach center, and a school. In fiscal year 2020, oil tax revenues totaled \$188 million and a portion of these revenues was used for a school project, road construction and maintenance, and community buildings.

## RED RIVER VALLEY WATER SUPPLY PROJECT

### Certification of Items to be Accomplished

Section 14 of Senate Bill No. 2020 (2019) requires the State Water Commission to certify to the Budget Section that a list of items identified in the section relating to the Red River Valley Water Supply Project have been accomplished. Funding for Phase 1 of the project may be used only if the Budget Section approves the certification. The State Water Commission reviewed the list of items to be accomplished and certified all items have been accomplished. In September 2020, the Budget Section approved the certification of items to be accomplished.

## LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

### Background

The Legislative Council staff contacted state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings. The results of the survey revealed one block grant--the community services block grant administered by the Department of Commerce's Division of Community Services--requires legislative hearings. A summary of the proposed use and distribution plan for the block grant will be provided by the Department of Commerce as part of the agency's appropriations hearing during the 2021 legislative session. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2021 legislative session.

### Recommendation

The Budget Section recommends [Senate Concurrent Resolution No. 4001](#) to authorize the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 67<sup>th</sup> Legislative Assembly through September 30, 2023.

## FEDERAL FUNDS

The Budget Section reviewed a report from the Legislative Council on federal funds anticipated to be received by state agencies and institutions for the bienniums ending June 30, 2019, and June 30, 2021. The report did not include federal funds received due to COVID-19. The report indicated agencies estimate \$3.9 billion of federal funds will be received during the 2019-21 biennium, \$39.0 million less than appropriated. Agencies estimate \$4.0 billion of federal funds will be received for the 2021-23 biennium, \$127.4 million more than is estimated to be received during the 2019-21 biennium.

The Budget Section reviewed a memorandum on the largest variances by agency for the 2019-21 biennium between federal funds appropriated and federal funds estimated to be received. The memorandum provides information regarding the major variances experienced by agencies during the 2019-21 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2021-23 biennium compared to the 2019-21 biennium.

## LEGISLATIVE COUNCIL STAFF REPORTS

The Budget Section received the following reports prepared by the Legislative Council staff:

- *66<sup>th</sup> Legislative Assembly Budget Status Report for the 2019-21 Biennium.* The report provides information on the status of the general fund and estimated June 30, 2021, ending balance, legislative changes to general fund revenues, and legislative appropriation changes.
- *66<sup>th</sup> Legislative Assembly Legislative Changes to State Agency Budgets for the 2019-21 Biennium.* The report provides information on legislative changes to agency budgets and is a compilation of the statements of purpose of amendment for action taken on appropriation bills during the 2019 session.
- *66<sup>th</sup> Legislative Assembly State Budget Actions for the 2019-21 Biennium.* The report provides information on the 2019-21 state budget, FTE positions, ongoing and one-time general fund appropriations, one-time funding, major programs, and related legislation for each state agency. The report also includes an analysis of major special funds and statistical information on state appropriations.
- *Estimated Revenue Sources and Distributions for Major State Funds for the 2019-21 Biennium.* The report provides information regarding revenue sources and transfers to major state funds and state agencies.
- *Oil and Gas Tax Revenue Allocation Flowchart.* The report provides information on the estimated allocation of oil and gas tax collections for the 2019-21 biennium based on the 2019 legislative revenue forecast.
- *2019-21 Biennium Report on Compliance with Legislative Intent.* The report provides the current status of major budget changes and initiatives approved by the 2019 Legislative Assembly for various agencies.

- *2019 and 2020 North Dakota Finance Facts*. The annual pocket brochure contains information on economic statistics, the state budget, K-12 education, higher education, human services, corrections, economic development, and transportation.

The Legislative Council staff also presented information to the Budget Section comparing ongoing general fund revenues and expenses and the use of oil tax revenue in the state budget.

## **OTHER REPORTS**

The Budget Section received other reports, including:

- Industrial Commission - Update on oil and gas development in the state - The Industrial Commission reported oil production in the state was approximately 1.4 million barrels per day in September 2019. The price of oil will affect the level of oil production in the state significantly.
- Office of Management and Budget - Capitol south entrance remodeling project - The Office of Management and Budget reported the project was anticipated to begin in April 2020 and be complete by December 2020.
- Department of Transportation - Driver's license sites - The report included information regarding how the department plans to improve wait times and other customer service issues at driver's license sites. The Department of Transportation reported it is addressing wait times by increasing the number of staff at certain sites, increasing the number of Saturdays certain sites are open for individuals to obtain a REAL ID, temporarily relocating the Fargo site, increasing opportunities for individuals to take road tests at private businesses, modernizing operations, and reviewing options to construct new sites in Minot and Williston.
- Department of Agriculture - Emergency feed transportation assistance program - The report detailed the status of the emergency feed transportation assistance program, including program eligibility requirements. The Department of Agriculture received 119 applications and approved 116 applications. Funds were disbursed the week of March 22, 2020, and the department anticipated \$250,000 of funds would be disbursed.
- Valley City State University - Integrated carbon plant project - Valley City State University reported to the Budget Section regarding the status of the integrated carbon plant project authorized in Senate Bill No. 2196 (2017). Valley City State University reported the project has potential to generate new revenue for the institution, allow for a decrease in utility expenditures, and create student research and teaching opportunities while lowering the university's carbon emissions. The 2017 Legislative Assembly authorized the university to proceed with the project by using revenue bonds of up to \$22.5 million. An independent feasibility study for the project was completed and determined the project would generate an average profit after tax of \$1.69 million per year for the first 20 years after the project is completed. The institution will seek approval from SBHE to proceed with issuing the revenue bonds authorized for the project.

## **AGENCY REQUESTS CONSIDERED BY THE BUDGET SECTION**

Pursuant to Sections 37-17.1-27, 54-16-04(2), 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered agency requests authorized by the Emergency Commission. The following agency requests were approved from June 26, 2019, through October 28, 2020:

### **Adjutant General**

- June 26, 2019, for authorization to spend \$494,915 from the state disaster relief fund during the 2017-19 biennium to pay the state share of actual and estimated disaster-related costs incurred between March 6, 2019, and June 30, 2019.
- September 26, 2019, to increase federal funds spending authority by \$1,473,805 in the grants line item to accept and expend funds from the National Telecommunications and Information Administration and the National Highway Traffic Safety Administration to fully integrate Next Generation 9-1-1 throughout the state.

### **Department of Public Instruction**

- December 18, 2019, to increase federal funds spending authority by \$17,793,798, including \$16,918,463 in the grants - other grants line item and \$875,335 in the operating expenses line item, to accept and expend funds from the United States Department of Education for a state comprehensive literacy plan aligned with the state's prekindergarten through grade 12 strategic vision initiatives.
- April 7, 2020, to increase federal funds spending authority by \$36.6 million in the grants - other grants line item to accept and expend funds anticipated to be received from the United States Department of Education as the result of the passage of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

- September 17, 2020, to increase federal funds spending authority by \$950,000 in the operating expenses line item to accept and expend federal Governor's Emergency Education Relief (GEER) funds for a remote learning digital platform and a special education teacher scholarship program.
- September 17, 2020, to increase federal funds spending authority by \$500,000 in the grants - other grants line item to accept and expend funds from ITD to provide grants to school districts to support the broadband needs of students and distance education.

### **Secretary of State**

- March 19, 2020, to receive \$3 million of federal funds from the Federal Election Assistance Commission relating to the federal Help America Vote Act of 2002.
- May 15, 2020, to increase federal funds spending authority by \$3 million in the election reform line item to accept and expend federal funds to prevent, prepare for, and respond to COVID-19-related issues impacting the 2020 elections.

### **State Department of Health**

- December 18, 2019, to increase spending authority from special funds available from life safety and construction review fees by \$55,000 in the salaries and wages line item and to add 1 FTE position by converting a temporary part-time position to an FTE position to review construction plans for long-term care facilities and hospitals.
- December 18, 2019, to increase special funds spending authority by \$3.54 million in the operating expenses line item to accept and expend funds from the Helmsley Charitable Trust to replace an estimated 1,733 automatic external defibrillators (AEDs) for law enforcement personnel in the state and to provide related AED training.
- March 19, 2020, to increase federal funds spending authority by \$475,000, including \$150,000 in the operating expenses line item and \$325,000 in the grants line item, to accept and expend funds from the United States Department of Agriculture Food and Nutrition Services Women, Infants, and Children (WIC) program to provide financial assistance for authorized grocery stores and retailers to upgrade point-of-sale systems to process WIC Electronic Benefits Transfer (EBT) transactions.
- March 19, 2020, to increase federal funds spending authority by \$6 million, including \$700,000 in the salaries and wages line item, \$3.2 million in the operating expenses line item, \$200,000 in the capital assets line item, and \$1.9 million in the grants line item to accept and expend funds from the federal Centers for Disease Control and Prevention to contain and mitigate the spread of COVID-19.
- May 15, 2020, to increase federal funds spending authority by \$475,000 to accept and expend grant funds relating to COVID-19 to purchase N95 mask fit testing kits and to train additional instructors to provide fit testing.
- May 15, 2020, to increase federal funds spending authority by \$201,000 to accept and expend federal grant funds to provide funding to domestic violence/rape crisis agencies to assist the agencies with increased costs related to the COVID-19 pandemic.
- May 15, 2020, to increase federal funds spending authority by \$5,075,000 to accept and expend federal grant funds for COVID-19 costs related to contact tracing and case investigation, laboratory technicians, laboratory supplies, and equipment.
- May 15, 2020, to transfer Centers for Disease Control and Prevention federal funds spending authority of \$6 million approved by the Emergency Commission and the Budget Section in March 2020 from various line items to a new COVID-19 response line item, including \$700,000 from the salaries and wages line item, \$3.2 million from the operating expenses line item, \$200,000 from the capital assets line item, and \$1.9 million from the grants line item.
- June 25, 2020, to increase federal funds spending authority by \$17.7 million in the COVID-19 response line item to accept and expend grant funds from the Centers for Disease Control and Prevention to contain and mitigate the spread of COVID-19.
- August 13, 2020, to increase federal funds spending authority by \$1,160,455 in the COVID-19 response line item to accept and expend grant funds to contain and mitigate the spread of COVID-19. A portion of the funding (\$175,455) will be provided to Sanford Health in Fargo, the designated special pathogen center in the state. The remainder (\$985,000) will be used for ventilators to support surge capacity.
- October 28, 2020, to increase federal funds spending authority by \$54.54 million to accept and expend funds from the Federal Emergency Management Agency (FEMA) for laboratory testing and capacity, personal protective equipment, overtime, and other related costs to contain and mitigate the spread of COVID-19.

### **State Library**

- September 26, 2019, to increase federal funds spending authority by \$220,000 in the grants line item to accept and spend funds from the federal Institute of Museum and Library Services for computer coding club programs for small and rural public libraries to prepare students with technological skills.
- April 7, 2020, to increase federal funds spending authority by \$200,000 in the operating expenses line item to accept and expend funds from the Institute for Museum and Library Services anticipated to be received as the result of the CARES Act.

### **Tax Commissioner**

- June 26, 2019, for \$300,000 from the Emergency Commission's contingency fund for anticipated homestead tax credits that exceed the appropriations for the program which need to be paid by the end of the 2017-19 biennium.

### **Department of Transportation**

- April 7, 2020, to increase federal funds spending authority by \$17,996,449 in the grants line item for Federal Transit Administration Section 5311 funds anticipated to be received as the result of the passage of the CARES Act.

### **Department of Human Services**

- April 7, 2020, to increase federal funds spending authority by \$42.7 million, including \$30 million in the grants - medical assistance line item, \$1.2 million in the operating expenses line item, and \$11.5 million in the grants line item to accept and expend funds anticipated to be received as a result of the CARES Act.
- April 7, 2020, to increase special funds spending authority from the department's operating fund by \$36 million in the grants line item to create a Childcare Emergency Operation Grant program to support child care providers until the COVID-19 declaration is ended.
- May 15, 2020, to increase federal funds spending authority by \$31,111,414 to accept and expend grant funds for costs relating to the COVID-19 pandemic to increase funding for the supplemental nutrition assistance program, increase estimated federal funds to be received for federal Title IV-E foster care and adoption assistance due to changes in the federal medical assistance percentage (FMAP), increase funding for supportive services for older adults and senior programs, provide additional funding for elderly nutrition services, increase assistance to individuals caring for family members, increase funding for the ombudsman program, provide additional funding for the Aging and Disability Resource Link, and increase mental health services.
- May 15, 2020, to increase federal funds spending authority by \$2.65 million to accept and expend funds relating to the COVID-19 pandemic from a community development block grant provided to the Department of Commerce for a household emergency rent bridge program and from FEMA to provide funding to the Great Plains Food Bank.
- June 25, 2020, to increase federal funds spending authority by \$2,360,572 to accept and expend funds for operating expenses with funding from the Department of Emergency Services for the crisis counseling assistance and training program (\$160,572); for operating expenses with funding from a federal Substance Abuse and Mental Health Services Administration COVID-19 emergency response for suicide prevention grant funding (\$800,000); for grants with funding transferred from the City of Fargo for its allocation from the CARES Act for the community development block grant program (\$400,000); and for grants with funding from a federal Department of Labor grant for the senior community services employment program (\$1,000,000).
- August 13, 2020, to increase federal funds spending authority by \$37,226,127 to accept and expend funds for costs relating to the COVID-19 pandemic for additional benefits to individuals enrolled in the supplemental nutrition assistance program (\$12,000,000), for the foster care and subsidized adoption programs (\$500,000), for medical assistance grants to continue the temporary increase of 6.2 percent in the state's FMAP (\$21,000,000), for rural area stimulus payments for human service centers and institutions to partially replace revenue reductions (\$3,445,927), and for support to the Great Plains Food Bank through claims submitted to FEMA for emergency food costs (\$280,200).
- September 17, 2020, to increase federal funds spending authority by \$17.5 million to accept and expend funds for the foster care and subsidized adoption programs (\$500,000) and for medical assistance grants (\$17 million) to continue the temporary increase of 6.2 percent in the state's FMAP through December 2020.
- October 28, 2020, to increase federal funds spending authority by \$25,534,942 to accept and expend federal funds to extend the emergency rent bridge program (\$4,034,942), to allow the department to receive and use a federal disaster response grant to provide mental health services to individuals affected by flooding in 2019 (\$4,000,000), and to continue the temporary increase of 6.2 percent in the state's FMAP for foster care and subsidized adoption (\$500,000) and medical assistance grants (\$17,000,000) through March 2021.



### **Attorney General**

- May 15, 2020, to increase federal funds spending authority by \$2,082,871 to accept and expend grant funds for costs relating to the COVID-19 pandemic for grants to local law enforcement agencies and domestic violence and community services agencies, overtime costs incurred by the agency, agency operating costs, and capital assets to purchase safety equipment.
- May 15, 2020, to increase federal funds spending authority by \$750,000 for a Community Oriented Policing Services Anti-Methamphetamine Program to investigate illegal activities related to the manufacture and distribution of methamphetamine.

### **Council on the Arts**

- May 15, 2020, to increase federal funds spending authority by \$421,700 to accept and expend grant funds for costs relating to the COVID-19 pandemic for agency administrative costs and grants to individuals and nonprofit arts and cultural organizations.

### **Department of Commerce**

- May 15, 2020, to increase federal funds spending authority by \$5,303,030 relating to COVID-19 for the community development block grant program, the community services block grant program, and the community development emergency solutions grant program to provide assistance to eligible local government agencies, low-income facilities, and programs providing support for low-income individuals and for the benefit of unsheltered homeless, sheltered homeless, and those at risk of homelessness in the state.
- June 25, 2020, to increase federal funds spending authority by \$2,113,524 in the CARES Act funding 2020 line item with funding available for the community development block grant program, which will be transferred to DHS for a household emergency rent bridge program to assist low-income individuals for rent eviction prevention.
- June 25, 2020, to increase federal funds spending authority by \$7 million and special funds spending authority by \$1 million for unmanned aircraft systems research grants.
- August 13, 2020, to increase federal funds spending authority by \$3,468,739 in the CARES Act funding 2020 line item for the Emergency Solutions Grants Program, also known as the Emergency Shelter Grants Program.
- August 13, 2020, to increase federal funds spending authority by \$694,317 in the grants line item for a state apprenticeship expansion program to increase apprenticeship opportunities in the state.
- October 28, 2020, to increase federal funds spending authority by \$1,921,418 for funding available for the community development block grant program, which will be transferred to DHS for a household emergency rent bridge program to assist low-income individuals for rent eviction prevention.

### **Department of Corrections and Rehabilitation**

- June 25, 2020, to increase federal funds spending authority by \$260,247 to accept and expend juvenile justice system enhancement grant funds to partner with the Council of State Governments Justice Center to conduct a data analysis relating to juvenile recidivism.
- June 25, 2020, to increase federal funds spending authority by \$268,948 to accept and expend justice reinvestment initiative grant funds to partner with Recidiviz to build technology tools to improve responsive supervision practices, enable DOCR to monitor the criminogenic needs of individuals under supervision, and create analyses that model the potential public safety impact of key initiatives.

### **Insurance Department**

- June 25, 2020, to increase federal funds spending authority by \$21,488,350 to accept and expend federal funds to create the Reinsurance Association of North Dakota.

### **Veterans' Home**

- June 25, 2020, to increase federal funds spending authority by \$190,331 in a new COVID-19 line item to accept and expend provider relief funding available to nursing facilities for salaries for additional cleaning services, overtime, and hazard pay and to purchase protective equipment and medical and cleaning supplies.

### **University System office**

- June 25, 2020, for a line item transfer of \$2.5 million from the agency's student financial assistance grants line item to its academic and technical education scholarships line item.
- September 17, 2020, to increase appropriation authority by \$2.5 million from the GEER Fund to create the Higher Education COVID Impact Grants program.

### **Department of Career and Technical Education**

- August 13, 2020, to increase federal funds spending authority by \$122,695 in the grants line item for a new program providing funding for apprenticeships across the state, primarily for information technology-related apprenticeships.

### **Office of Management and Budget**

- August 13, 2020, to increase federal funds spending authority by \$5,932,707 in the grants line item to accept and expend GEER funds provided in the CARES Act. The funding will be forwarded to the Department of Public Instruction and the University System for distribution to local education agencies and institutions of higher education to allow for the continuation of educational services during the COVID-19 pandemic.
- September 17, 2020, to authorize a line item transfer of \$5,932,707 of GEER funds provided in the CARES Act from the grants line item to a special line item.

### **Department of Veterans' Affairs**

- September 17, 2020, to increase federal funds spending authority by \$400,000 in the grants - transportation program line item to increase total funding available for the program to \$1.2 million.

### **Department of Trust Lands**

- September 17, 2020, to authorize 1 FTE position to assist with minerals management.

### **Department of Environmental Quality**

- September 17, 2020, to increase federal funds spending authority by \$182,500 in the salaries and wages line item (\$160,500) and the operating expenses line item (\$22,000) to accept and expend funds from FEMA for reimbursement of costs related to the COVID-19 pandemic.

### **Industrial Commission**

- October 28, 2020, to increase federal funds spending authority by \$77,249 to accept and expend federal Safe Drinking Water Act funding to plug abandoned wells confiscated by the department.

### **Federal Coronavirus Relief Fund**

The state received an allocation of \$1.25 billion from the federal Coronavirus Relief Fund established in the CARES Act. The funds may be used for costs that are required due to the COVID-19 health pandemic, are not accounted for in the most recently approved budget, and are incurred during the period March 1, 2020, through December 30, 2020.

The following are Budget Section actions relating to the use of federal coronavirus relief funds:

- May 15, 2020, to increase federal funds spending authority by \$524,183,609 to allow the following 10 agencies to accept and expend federal coronavirus relief funds for costs relating to the COVID-19 pandemic:
  - Information Technology Department - \$67,618,226;
  - Department of Trust Lands - \$120,000;
  - State Department of Health - \$85,557,461;
  - Veterans' Home - \$131,097;
  - Department of Human Services - \$24,899,276;
  - Job Service North Dakota - \$110,000,000;
  - Industrial Commission - \$33,175,000;
  - Bank of North Dakota - \$200,000,000;
  - Department of Corrections and Rehabilitation - \$1,287,549; and
  - Department of Agriculture - \$1,395,000.
- June 25, 2020, to increase federal funds spending authority by \$401,115,305 to allow the following agencies to accept and expend federal coronavirus relief funds for costs relating to the COVID-19 pandemic:
  - Governor's office - \$18,085;
  - Office of Management and Budget - \$119,700;
  - State Auditor - \$13,903;

Tax Department - \$81,601;  
 Legislative Assembly - \$1,250,000;  
 Legislative Council - \$100,000;  
 Judicial branch - \$26,383;  
 University System office - \$1,508,387;  
 Bismarck State College - \$2,417,365;  
 Lake Region State College - \$483,426;  
 Williston State College - \$584,432;  
 University of North Dakota - \$13,578,957;  
 North Dakota State University - \$19,788,622;  
 North Dakota State College of Science - \$3,825,311;  
 Dickinson State University - \$862,335;  
 Mayville State University - \$248,543;  
 Minot State University - \$588,379;  
 Valley City State University - \$237,930;  
 Dakota College at Bottineau - \$372,316;  
 Department of Environmental Quality - \$70,000;  
 Department of Veterans' Affairs - \$2,860;  
 Department of Human Services - \$9,866,232;  
 Job Service North Dakota - \$200,000,000;  
 Industrial Commission - \$33,176,513;  
 Mill and Elevator Association - \$149,079;  
 Workforce Safety and Insurance - \$116,576;  
 Highway Patrol - \$404,094;  
 Department of Corrections and Rehabilitation - \$4,226,240;  
 Adjutant General - \$10,000,000;  
 Department of Commerce - \$69,679,000;  
 Department of Agriculture - \$2,700,000;  
 Branch research centers - \$726,007;  
 NDSU Extension Service - \$855,400;  
 Northern Crops Institute - \$115,586;  
 Main Research Center - \$989,968;  
 Racing Commission - \$1,000;  
 State Historical Society - \$20,000;  
 Parks and Recreation Department - \$96,547;  
 Department of Transportation - \$17,881,982; and  
 State Treasurer (to be distributed to political subdivisions) - \$3,932,546.

- June 25, 2020, to increase federal funds spending authority in the Department of Agriculture's grants line item by \$5 million from the federal Coronavirus Relief Fund for a competitive grant program provided to North Dakota research companies for COVID-19 antibody treatment research.
- June 25, 2020, to increase federal funds spending authority for the Legislative Assembly by \$750,000 in a COVID-19 line item to accept and expend a portion of the federal funds allocated to ITD from the federal

Coronavirus Relief Fund for one-time costs relating to the purchase of equipment and for other costs to enable the Legislative Assembly to meet remotely.

- August 13, 2020, to increase federal funds spending authority by \$319,701,086 to allow the following agencies to accept and expend federal coronavirus relief funds for costs relating to the COVID-19 pandemic:
  - Secretary of State - \$49,216;
  - Office of Management and Budget - \$894,525;
  - Information Technology Department - \$500,000;
  - Judicial branch - \$285,829;
  - University System office - \$160,400;
  - Bismarck State College - \$1,584,357;
  - Lake Region State College - \$369,887;
  - Williston State College - \$515,932;
  - University of North Dakota - \$6,826,006;
  - North Dakota State University - \$2,882,792;
  - North Dakota State College of Science - \$1,452,586;
  - Dickinson State University - \$1,179,920;
  - Mayville State University - \$764,488;
  - Minot State University - \$954,560;
  - Valley City State University - \$270,627;
  - Dakota College at Bottineau - \$393,960;
  - State Department of Health - \$96,558,468;
  - Department of Human Services - \$13,277,209;
  - Job Service North Dakota - \$100,000,000;
  - Mill and Elevator Association - \$55,632;
  - Workforce Safety and Insurance - \$83,354;
  - Department of Corrections and Rehabilitation - \$386,398;
  - Adjutant General - \$23,296,780;
  - Department of Agriculture - \$2,261,000;
  - Upper Great Plains Transportation Institute - \$102,495;
  - Branch research centers - \$105,000;
  - Main Research Center - \$174,999;
  - Department of Transportation - \$294,493;
  - Office of Management and Budget (to be distributed to private higher education institutions) - \$5,000,000; and
  - State Treasurer (to be distributed to political subdivisions) - \$59,020,173.
- August 13, 2020, to transfer \$5,513,789 of federal coronavirus relief funds previously authorized by the Budget Section in May 2020 and June 2020 to a separate line item within the DOCR budget.
- September 17, 2020, to repurpose up to \$50 million of the \$200 million appropriated to the Bank of North Dakota from the federal Coronavirus Relief Fund to establish a new program to provide one-time grants to businesses to assist with interest expenses on debt that was issued prior to the COVID-19 emergency.
- September 17, 2020, to increase Department of Public Instruction federal funds spending authority by \$30 million in the grants - other grants line item to expend funds from the federal Coronavirus Relief Fund to reimburse school districts for additional staffing needs caused by the COVID-19 pandemic. This funding is available because the Bank of North Dakota does not anticipate spending \$120 million of its original \$200 million allocation.

- October 28, 2020, to increase federal funds spending authority by \$221,430,286 to allow the following agencies to accept and expend federal coronavirus relief funds for costs relating to the COVID-19 pandemic:
  - Office of Management and Budget - \$988,830;
  - Office of Administrative Hearings - \$522;
  - Legislative Assembly - \$1,100,000;
  - Department of Public Instruction - \$33,816,217;
  - Bismarck State College - \$228,000;
  - Lake Region State College - \$27,500;
  - Williston State College - \$612,000;
  - University of North Dakota - \$1,614,803;
  - North Dakota State College of Science - \$80,000;
  - Dickinson State University - \$306,184;
  - Mayville State University - \$1,193,625;
  - Minot State University - \$911,500;
  - Valley City State University - \$231,796;
  - Dakota College at Bottineau - \$54,355;
  - Department of Career and Technical Education - \$470,980;
  - State Department of Health - \$10,000,000;
  - Department of Environmental Quality - \$675,000;
  - Veterans' Home - \$330,943;
  - Indian Affairs Commission - \$20,915;
  - Department of Human Services - \$14,846,520;
  - Job Service North Dakota - \$9,727,570;
  - Industrial Commission - \$16,000,000;
  - Bank of North Dakota - \$20,000,000;
  - Mill and Elevator Association - \$12,920;
  - Workforce Safety and Insurance - \$818,122;
  - Highway Patrol - \$13,515,000;
  - Department of Commerce - \$29,000,000;
  - Department of Agriculture - \$2,200,000;
  - State Seed Department - \$6,117;
  - State Fair Association - \$105,272;
  - Parks and Recreation Department - \$154,438;
  - Department of Transportation - \$651,458; and
  - State Treasurer (To be distributed to political subdivisions) - \$61,729,699.

These funds are available because agencies do not anticipate spending \$221,430,286 of their original allocations of the \$1.25 billion.

# COMMERCE COMMITTEE

The Commerce Committee was assigned four studies:

- Section 14 of House Bill No. 1018 (2019) directed a study of the future administration and regulation of the unmanned aircraft systems (UAS) industry in North Dakota, including beyond visual line of sight (BVLOS) UAS. The study directive required a determination of the appropriate state agency or private entity to be assigned the responsibility of regulating UAS programs, including licensing, registration, appropriate fees, and other responsibilities.
- Section 1 of House Bill No. 1485 (2019) directed a study of protections, enforcement, and remedies regarding the disclosure of consumers' personal data. The study directive required a review of other states' privacy laws and applicable federal law.
- Section 1 of Senate Bill No. 2241 (2019) directed a study of the regulation of sewage treatment system installation, maintenance, testing, and repair. The study directive required consideration of a uniform set of rules; uniform occupational licensing requirements; testing and education requirements for occupations that install, maintain, test, and repair sewage treatment systems; the regulatory agency best able to regulate sewage treatment systems; options for maintaining local government control over sewage treatment system regulation; and issues relevant to these considerations.
- Senate Concurrent Resolution No. 4013 (2019) directed a study of the distribution and transportation of food in the state necessary to the lives of individuals in rural communities, and the roles of state entities in facilitating the movement of food to rural areas of the state.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A semiannual report from the Department of Commerce regarding the status of the program to establish and administer a UAS test site in cooperation with the University of North Dakota, Aeronautics Commission, Adjutant General, and private parties appointed by the Governor (Section 54-60-28).
- A semiannual report from the Department of Commerce regarding the development of the BVLOS UAS program and the total amount deposited by the State Treasurer in the general fund (2019 House Bill No. 1018, § 13).
- A report from the State Board of Higher Education on the skilled workforce student loan repayment program (2019 House Bill No. 1171, § 1).
- A report from the State Board of Higher Education on the skilled workforce scholarship program (2019 House Bill No. 1171, § 2).

Committee members were Representatives Scott Louser (Chairman), Pamela Anderson, Thomas Beadle, Claire Cory, Terry B. Jones, Jim Kasper, Jeffery J. Magrum, Corey Mock, Mike Nathe, Emily O'Brien, Shannon Roers Jones, Randy A. Schobinger, and Denton Zubke and Senators Randy Burckhard, Jim Dotzenrod, Scott Meyer, Ronald Sorvaag, and Shawn Vedaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## UNMANNED AIRCRAFT SYSTEMS STUDY

### Background

The Federal Aviation Administration (FAA) has adopted the term unmanned aircraft to describe aircraft systems without a flight crew on board. Other common names include unmanned aerial vehicles (UAV) or drones. While UAS originated mostly in military applications, the operation of UAS is quickly expanding to commercial, scientific, recreational, and other uses.

House Bill No. 1018, the agency appropriation bill for the Department of Commerce, was amended to include a Legislative Management study of the future administration and regulation of the state's UAS industry, including BVLOS UAS. Section 12 of the bill provided a supplemental appropriation of \$28 million to the Department of Commerce for a BVLOS UAS program. Section 13 created a new section to North Dakota Century Code Chapter 54-60 to establish a BVLOS UAS program for the design, purchase, implementation, and operating costs of BVLOS UAS. The department must require any entity receiving funding for this program which is operating the BVLOS UAS to provide quarterly payments to the State Treasurer equal to 3 percent of the entity's gross income associated with the operation of the

BVLOS UAS as reported in the entity's prior year financial statements. Any funds received under this section must be deposited in the state general fund.

### **North Dakota's UAS Industry**

Since 2013, North Dakota has invested more than \$40 million to advance UAS research and development. The 2013 Legislative Assembly established the UAS program, provided a one-time \$5 million appropriation, and provided a continuing appropriation to defray the expenses of the UAS program. The legislation required the Department of Commerce to establish the UAS program in collaboration with the University of North Dakota, Aeronautics Commission, Adjutant General, and private parties; to administer the UAS test site upon receiving FAA approval; and to provide semiannual reports to the Legislative Management. Funding is provided to the Northern Plains UAS Test Site located in Grand Forks.

The Northern Plains UAS Test Site is one of seven FAA UAS test sites in the United States and was the first site to conduct flights, launching its first research flight in May 2014. The Northern Plains Unmanned Systems Authority, chaired by the lieutenant governor, oversees the Northern Plains UAS Test Site and includes representatives from the University of North Dakota, North Dakota State University, the Aeronautics Commission, the Department of Commerce, the Adjutant General, and the North Dakota Aviation Council.

Over \$2.7 million was appropriated for the UAS program for the 2015-17 biennium, with \$1.2 million designated for a business incentive match fund to incentivize private sector business development related to the test site. The 2017 Legislative Assembly appropriated \$30 million for the UAS program. The 2019 Legislative Assembly provided a supplemental appropriation of \$28 million to the Department of Commerce for a BVLOS UAS program for the 2017-19 biennium. As opposed to visual line of sight flights which are performed within the UAS pilot's line of sight, BVLOS flights are performed out of visual range. The 2019 Legislative Assembly also appropriated \$4.25 million to the department for the UAS program for the 2019-21 biennium.

Senate Bill No. 2018 (2013) established the enhanced use lease grant program and provided a one-time appropriation of \$2.5 million to the Department of Commerce to develop the program and award grants. The department was directed to award grants for constructing infrastructure required for an enhanced use lease private sector business development project located on or adjacent to the Grand Forks Air Force Base. In February 2015, Grand Sky Development Company entered an agreement on behalf of Grand Forks County with the Grand Forks Air Force Base to form the Grand Sky UAS Business and Aviation Park. Grand Sky provides Grand Forks Air Force Base lease tenants the ability to test UAS and BVLOS UAS flights in partnership with the Northern Plains UAS Test Site. During the 2015-17 biennium, \$7.5 million was appropriated for the enhanced use lease grant program. During each of the 2017-19 and 2019-21 bienniums, \$3 million was appropriated for the program.

### **Federal and State UAS Regulations**

The FAA is authorized by federal law to regulate the use of navigable airspace to ensure the safety of aircraft and the efficient use of airspace; however, states and local governments have begun promulgating drone regulations that may lead to issues of preemption. Since 2013, over 40 states have enacted drone-related laws or regulations. States have addressed privacy issues, commercial and government drone operations, recreational drone use, and criminal penalties for drone misuse.

In North Dakota, House Bill No. 1328 (2015) created Chapter 29-29.4, which outlines limitations on the use of UAV for surveillance purposes and prohibits arming a UAV with lethal weapons.

North Dakota does not require a person to register a UAS with the state. Section 2-05-11 requires aircraft operating within the state to be registered annually with the Aeronautics Commission along with a fee based on the aircraft's weight. However, the Aeronautics Commission has not interpreted the statute to require UAS to be registered with the commission. Although North Dakota does not require a person to register a UAS with the state, the federal government, through the FAA, requires registration of certain unmanned aircraft.

The FAA previously issued a statement noting, "[b]ecause Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval." Despite the FAA's stance, some states require commercial or governmental UAS operators to register with their respective state, while other states have chosen to specifically exempt UAS from state aircraft registration requirements.

### **Testimony and Committee Considerations**

The committee received testimony from representatives of the Aeronautics Commission, Department of Commerce, Department of Transportation, Northern Plains UAS Test Site, and a commercial UAS business and aviation park.

The representative of the Aeronautics Commission provided information regarding the commission's role in the state's aviation industry and the commission's regulatory functions. According to the testimony, the commission's core agency duties include airport infrastructure grant funding, airport planning support, aviation education promotion, and certain regulatory functions, including aircraft registration, aerial applicator licensing, and aircraft dealer licensing. Because the commission does not interpret the state's aircraft registration statutes to apply to UAS, UAS users are not required to register with the commission. Testimony indicated the commission has been proactive with UAS education outreach to ensure UAS operations are integrated safely into the national airspace system, including providing information on the commission's website directing individuals to information on how to legally and safely operate UAS as well as working with the North Dakota Aviation Council and the aerial applicator community to increase awareness and safety regarding UAS operations.

In response to committee concerns regarding whether UAS should be required to be registered with the state, stakeholders recommended the Legislative Assembly be cautious in enacting legislation that overly restricts or regulates UAS operations. According to the testimony, other states are overregulating UAS operations at the state level unnecessarily because regulations are present at the federal level. Testimony emphasized the importance of North Dakota continuing to be a desirable state to conduct UAS operations and to appeal to end users and commercial operators.

The committee received testimony outlining the numerous advances the state has made to become a leader in UAS operations. According to the testimony, North Dakota was selected as one of seven congressionally approved test sites in the nation in 2013. The Northern Plains UAS Test Site is based in Grand Forks, and the test site can assist and work with companies throughout the country. According to the testimony, there has been an increased demand for the Northern Plains Test Site's testing capabilities, with both private sector and government contracts, to test, operate, and commercialize UAS operations in the state. The test site, along with its private industry partner, Xcel Energy, received approval from the FAA to fly BVLOS over transmission lines in eight states and to fly BVLOS over distribution lines in Grand Forks.

The committee received testimony noting the Grand Sky UAS Business and Aviation Park, located on the Grand Forks Air Force Base, is the country's first commercial UAS park with the sole purpose of testing UAS. Grand Sky has been operational since 2015, and the state has invested over \$15 million to fund and support infrastructure at the park. Grand Sky has two primary tenants, General Atomics and Northrop Grumman Corporation, and most of the individuals who work at the park are tenants. According to the testimony, private companies have invested nearly \$60 million at Grand Sky, and over 170 individuals work at the location with an average salary of \$70,000. Since 2018, Grand Sky has been operating a BVLOS system that permitted two significant UAS events to occur, namely General Atomics obtained FAA approval to routinely fly without a chase plane in support of the company's business objectives and General Atomics successfully flew two large UAS simultaneously with only one pilot. Other countries' air forces have conducted, or are planning on conducting, training at Grand Sky.

North Dakota, through the state's Department of Transportation, was selected as 1 of 10 nationally approved drone integration pilot programs in 2017. According to the testimony, the goal of the pilot programs is for state, local, and tribal governments to partner with private sector entities to accelerate the safe integration of UAS into the national airspace system. Testimony indicated each pilot program has different goals, and North Dakota's program will help to allow routine BVLOS operations and flight over people in urban environments. North Dakota's Department of Transportation was the first state agency to receive an operations-over-people waiver from the FAA to fly UAS over people through the pilot program. Testimony indicated the Department of Transportation intends to use the waiver to conduct construction and survey work, stockpile and quarry pit analytics, and conduct infrastructure inspections.

The Northern Plains UAS Test Site, on behalf of the Department of Commerce, is responsible for establishing and administering a BVLOS UAS program. According to the testimony, an initial inventory of state assets and infrastructure was conducted, and the FAA and potential users of the network have been educated and briefed on the program. The target date for the next stage of the BVLOS network in the Bakken is January 2021. Testimony indicated companies are considering relocating to the state for business development opportunities utilizing UAS, and the industry is anticipated to triple within 10 years of the investment in the BVLOS network.

According to the testimony, the Coronavirus (COVID-19) pandemic has not slowed the growth of the UAS industry. It was noted the FAA contacted the Northern Plains UAS Test Site regarding how drone operations could assist during the pandemic, and package delivery was identified as an area for which drones could provide support. Flytrex, a UAS package delivery company, has been conducting routine operations to supply groceries and other on-demand food options to a launch neighborhood in south Grand Forks.

In response to committee concerns regarding what the Legislative Assembly can do to support the state's UAS industry's growth, testimony indicated the industry needs the Legislative Assembly's continued investment and support



so projects, technology, and innovations can continue. Committee members encouraged the Northern Plains UAS Test Site and Grand Sky to continue to broadcast their successes and advances to the public and the Legislative Assembly.

### **Conclusion**

The committee makes no recommendation regarding its UAS study.

## **DISCLOSURE OF CONSUMERS' PERSONAL DATA STUDY**

### **Bill History**

As introduced, House Bill No. 1485 would have prohibited covered entities from disclosing any part of a record containing an individual's personal information to any person other than the individual who is the subject of the record, without the individual's express written consent. The bill would have authorized the Attorney General to enforce the law by using various powers. The bill also would have permitted an individual to bring a civil action to recover damages, costs, and fees if a covered entity purchased, received, sold, or shared the individual's personal information in violation of the chapter.

The House Industry, Business and Labor Committee considered an amendment to the bill which essentially mirrored a data privacy bill that had been introduced in the Washington State Legislature in January 2019. Ultimately, House Bill No. 1485 was amended to provide for a mandatory Legislative Management study on protections, enforcements, and remedies regarding the disclosure of consumers' personal data, and both chambers passed the bill as a mandatory study.

### **Background**

The security and privacy of personal data is a growing concern as the Internet and new technology have made individuals' personal data more accessible and easier to collect, access, and repurpose or manipulate. Personal data includes information, such as an individual's email address, phone number, birthdate, Social Security number, or credit card information.

Generally, data privacy involves controlling who has access to individuals' personal information. Data privacy laws include laws requiring organizations to keep individuals' personal information confidential and allowing consumers to opt-out of data collection. Data security involves protecting individuals' personal information from unauthorized access. Data security laws include security breach laws and other cybersecurity legislation.

Privacy regulation in the United States has focused primarily on protecting certain types of personal information, such as financial or health information. However, there has been a push to regulate privacy more broadly as it relates to individuals' personal information.

The first major advance to regulate the privacy of consumers' personal data occurred in Europe when the European Union's General Data Protection Regulation (GDPR) took effect in May 2018. Any global business that sells to or has European Union customers is subject to the GDPR, regardless of where the business is based. The General Data Protection Regulation sets forth rules about how companies treat European Union citizens' personal data, even those purchasing United States products or services or living in the United States.

### **Federal Privacy Laws**

The United States lacks a comprehensive federal law that regulates the collection and use of personal information. Since the European Union's GDPR became effective and as some states have introduced data privacy legislation, interest has been developing for a comprehensive federal privacy law. Federal lawmakers have introduced several privacy bills, varying in scope, but no formal action has been taken. Instead, the federal government has primarily addressed data privacy by regulating only certain sectors and types of sensitive information, such as health and financial information, through Acts such as the Health Insurance Portability and Accountability Act of 1996; the Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act; and the Fair Credit Reporting Act.

### **North Dakota Data Privacy and Security Laws**

In 2005 legislation was enacted to create Chapter 51-30, regarding security breach notification. Chapter 51-30 requires a person that owns or licenses computerized data that includes personal information to disclose or notify consumers of breaches involving the consumers' personal information. The Attorney General is authorized to enforce the chapter.

### **Other States' Laws**

In 2018 California enacted one of the broadest online privacy laws in the country. As the European Union's GDPR began taking effect, advocates in California were gathering signatures for a data privacy measure for the November 2018 ballot. The backers of the initiative agreed to not place the measure on the ballot after the state legislature introduced a similar proposal, namely the California Consumer Privacy Act of 2018 (CCPA), which regulates the

collection, use, sale, and disclosure of California residents' personal information by qualifying businesses. The bill was signed into law on June 28, 2018, but did not go into effect until January 1, 2020.

Numerous bills addressing data privacy were introduced in states during 2019 legislative sessions, including the Washington State Legislature bill after which one amendment to North Dakota House Bill No. 1485 (2019) was mirrored. The Washington Privacy Act (WPA) was introduced in January 2019, and unlike other states that modeled bills largely on the CCPA, the WPA would have established requirements similar to the European Union's GDPR. In addition to notice requirements and consumer rights, such as access, correction, and deletion, the WPA would have imposed restrictions on the use of automatic profiling and facial recognition. The Washington Privacy Act passed the Senate, but the House of Representatives failed to vote on the bill before the legislative deadline.

### **Uniform Law Commission**

The Uniform Law Commission (ULC) has recognized data security and privacy as a topic for consideration as a uniform law. In 2019 a study committee on online data privacy met to determine whether the topic should be addressed by a drafting committee, and after submitting a final report on the committee's recommendation to proceed with a drafting committee, the ULC's Executive Committee authorized the appointment of a drafting committee on collection and use of personally identifiable data.

### **Testimony and Committee Considerations**

The committee received testimony from numerous stakeholders, including representatives of the Attorney General's office. The committee's deliberations primarily focused on whether data privacy should be addressed legislatively at the state level.

The committee received testimony from the sponsor of House Bill No. 1485 (2019). Testimony indicated numerous companies collect and sell consumers' personal data for profit, and consumers have a right to know what is being done with the information. As introduced, House Bill No. 1485 would have prohibited companies from disclosing consumers' personal information to others, unless the consumer provided written consent. The bill would have authorized the Attorney General to enforce the law and would have permitted an individual to bring a civil action to recover damages if a company sold or shared the individual's personal information in violation of the law. The committee received testimony from a representative of the Attorney General's office noting there was a significant fiscal note attached to House Bill No. 1485, as introduced, because the additional enforcement duties would require additional resources and full-time employees, including an attorney and paralegal.

The committee received testimony noting the sponsor of House Bill No. 1485 proposed amendments to the bill during the legislative session, and the proposed amendments essentially mirrored a Washington state data privacy bill. According to the testimony, the sponsor worked extensively with individuals outside the state, including a senator from Washington who introduced the data privacy bill in the Washington State Legislature in January 2019.

The committee received testimony indicating the Washington data privacy bill did not pass due to stakeholders' concerns. According to the testimony, the Washington State Legislature is no longer pursuing the data privacy bill that failed to pass, and legislators are tackling the data privacy issue by drafting new legislation.

The committee considered incorporating the proposed amendments to House Bill No. 1485 into a bill draft. The committee received testimony from a representative of the Attorney General's office outlining enforcement concerns identified in the proposed amendments and proposed changes.

The committee received testimony from a representative of Midco indicating complying with data privacy legislation would be highly problematic for the company. According to the testimony, Midco is the largest Internet service provider in the state with over 500 employees, and the company likely would be the only Internet service provider in the state affected by the bill. Testimony indicated if the bill were enacted, the company may need to invest capital in compliance measures that could result in fewer consumers having access to affordable broadband.

The committee received testimony from a representative of the Attorney General's office regarding the difference between consumer data privacy legislation and open records laws. Testimony indicated consumer data privacy legislation likely would apply to private entities that receive or possess consumers' data, while open records laws apply to public entities.

The committee received considerable testimony from several stakeholders indicating implementing a data privacy law at the state level could contribute to a patchwork of state laws leading to state law conflicts, confusion for consumers, and compliance issues for businesses that operate in multiple states. Testimony indicated the interactions generating consumer data often involve many states, and narrowing data privacy legislation to a single state's borders is difficult. According to the testimony, almost one-half of the states in 2019 introduced data privacy legislation, largely based on

California's data privacy law, but none of the bills passed. Testimony indicated a comprehensive data privacy model has not been passed or tested in any state due to the complexity of the issues and stakeholders' concerns.

The stakeholder's testimony noted a patchwork of state laws on data privacy is not conducive to business and economic development. Businesses likely would not favor operating in a state that has its own data privacy laws. Some committee members expressed concern that passing data privacy legislation at the state level likely would not spur companies to change practices because North Dakota is a state with a low population, and it may cause North Dakota citizens to lose access to certain services and businesses. Some committee members acknowledged larger states may set the standard for compliance on data privacy because companies will be incentivized to conduct business in those more populated states.

The committee received testimony from several stakeholders emphasizing it is the federal government and Congress' role to pass a comprehensive federal privacy law to provide uniform consumer protections across state lines and to eliminate concerns of a patchwork of state laws. Some committee members expressed concerns that Congress has not prioritized federal data privacy legislation, and the state cannot wait for Congress to act on such a sensitive issue.

According to testimony from North Dakota's Congressional representative, the Legislative Assembly should be cautious in enacting data privacy legislation, and the federal government, via Congress, should enact data privacy legislation to avoid a patchwork of state laws. Testimony indicated if the state passes a strict data privacy law, there is a risk it will negatively impact North Dakota businesses as more stringent regulations tend to hurt smaller entities. In response to concerns from committee members regarding how long the state should wait for Congress to act on data privacy, the testimony indicated states could consider a uniform law to address the issue if the federal government does not pass comprehensive data privacy legislation in a timely manner.

The committee received testimony from a representative of the Attorney General's office indicating the ULC's executive committee authorized a drafting committee to be appointed regarding the collection and use of personally identifiable data. Testimony indicated a drafting committee would not have been recommended if the ULC believed federal legislation addressing the issue was likely and imminent. According to the testimony, the drafting and adopting of uniform laws is a thoughtful and deliberative process, and it can take between 2 to 3 years to adopt a law to recommend to state legislatures for consideration. Testimony indicated stakeholders are invited to participate and provide feedback during the uniform law drafting process.

### **Conclusion**

The committee makes no recommendation regarding its data privacy study.

## **SEWAGE TREATMENT SYSTEM REGULATION STUDY**

### **Background**

Senate Bill No. 2241 directed a Legislative Management study of the best regulatory scheme for sewage treatment system installation, maintenance, testing, and repair. The proper design, installation, maintenance, testing, and repair of onsite sewage systems is important for environmental health concerns and to protect the public. Historically, local public health units in the state have been the primary regulators of single residence onsite sewage treatment systems.

North Dakota's public health system has 28 independent local public health units working in partnership with the State Department of Health. The 28 local public health units are organized into single or multicounty health districts, city/county health departments, or city/county health districts. The public health units may exercise their own powers, and the units have administrative authority to make decisions to meet local needs. However, the public health units are required to meet state standards and follow state laws and regulations.

The oversight of single residence onsite sewage treatment systems by local public health units encompasses licensing of contractors, inspecting installed systems, and factoring in regional soil conditions. However, some challenges of this local control include varying onsite sewage system design, installation, and licensing requirements from region to region; lack of oversight in areas in which the local public health unit is unable to establish a program; and a lack of needed training opportunities for installers.

Some individuals in the industry have supported the creation of a unified code for septic system design, installation, and maintenance for potential adoption across the state. Interested parties, including contractors and local environmental health practitioners, drafted requirements for onsite sewage treatment systems, and a number of public health units have adopted those uniform requirements. However, because not all of the public health units have adopted these requirements, the design, installation, and licensing requirements continue to vary region to region.

Supporters of uniform, statewide regulations have identified certain issues that remain regarding how to carry out the proposed statewide regulations in a uniform manner. These issues include providing statewide education for installers

and regulators, providing an accessible database of licensed installers, ensuring competency of regulators, and designating a host state agency to administer the statewide components of the regulations.

### **North Dakota Administrative Rules**

North Dakota Administrative Code Chapter 62-03.1-03, regarding private sewage disposal systems, outlines requirements for the installation of onsite sewage treatment systems. Although this chapter is housed in the State Board of Plumbing's administrative rules, the State Board of Plumbing is not defined as an administrative authority; rather, the term "administrative authority" is defined as the State Department of Health, district health units, or county or city health departments that have expertise in onsite sewage treatment systems. The State Board of Plumbing does not license individuals to install onsite sewage treatment systems; instead, the public health units license those individuals. Although the rules outline some requirements for the installation of onsite sewage treatment systems, most of the rules have not been updated since 2000, and many public health units have varying licensing and continuing education requirements.

### **Testimony and Committee Considerations**

The committee received testimony from representatives of the Department of Environmental Quality, the State Board of Plumbing, the North Dakota Association of Counties, local public health units, and from licensed installers. The committee's deliberations primarily focused on whether a statewide, uniform code should be implemented and the appropriate degree of local control versus state involvement in onsite sewage treatment regulation.

Testimony from a representative of a local public health unit indicated approximately one-fourth of homes in North Dakota rely on onsite wastewater systems to dispose of human waste. The average residential home processes 50,000 to 80,000 gallons through the home's wastewater system per year. Onsite wastewater systems that are sited, designed, constructed, or maintained improperly can contaminate ground or surface water.

A representative of the Department of Environmental Quality provided testimony regarding the current regulatory framework for onsite sewage treatment systems. Local public health units oversee the regulation of onsite sewage treatment systems, including licensing contractors and inspecting installed systems. According to the testimony, the regulatory structure creates some challenges, including a lack of a statewide unified code; no statewide licensing, training, or database of qualified installers; and perceived inconsistencies when comparing local public health units' enforcement decisions from jurisdiction to jurisdiction.

Some committee members acknowledged the challenges that can occur when regulations vary from region to region, but expressed concerns in implementing a "one-size-fits-all" regulatory scheme.

Testimony from several stakeholders expressed support for a statewide adoption of a uniform code that allows for local modifications. Testimony indicated a desire by some stakeholders for a state agency to oversee the licensing and education for installers and to provide a statewide database of licensed contractors.

A committee member proposed the State Board of Plumbing should be the state regulatory body to oversee the licensing and education of installers.

Testimony from a representative of the State Board of Plumbing indicated the board is not the appropriate state agency to regulate onsite sewage treatment systems because plumbing and the installation of private sewage disposal systems are different disciplines. According to the testimony, the State Board of Plumbing does not license installers of sewage treatment systems or inspect private sewage disposal systems, and the board does not have the appropriate training or expertise to oversee the installation or inspection of such systems. It was noted plumbers install and maintain plumbing inside a home, while the septic and drain field outside the home are installed by individuals licensed by local public health units. Testimony emphasized the Department of Environmental Quality is the appropriate state agency to regulate sewage treatment systems due to the department's familiarity with the industry. According to the testimony, the regulation of sewage treatment systems has been an issue for 10 years and has been debated in previous legislative sessions. The primary issue identified in the previous legislative sessions was funding, as the Department of Environmental Quality previously indicated additional full-time employees and resources would be required if the department assumed the additional duties and responsibilities of regulating onsite sewage treatment systems.

Testimony from a representative of the Department of Environmental Quality indicated if the department was tasked with licensing or training onsite sewage treatment system installers, the department would need at least 2 additional full-time employees to address licensing, education, and complaints. According to the testimony, the department's budget would need approximately \$400,000 to \$500,000 for the additional employees' salary, benefits, and travel expenses.

The committee considered a bill draft proposed by a committee member which would have required the Department of Environmental Quality to license onsite sewage treatment system installers. The bill draft would have authorized the department to establish standards and procedures for issuing and renewing a license.

The committee considered a proposal prepared by a representative of the North Dakota Association of Counties which would have required the Department of Environmental Quality to license onsite sewage treatment system installers and would have created an onsite sewage technical advisory board. The association's proposal also would have given the advisory board the authority to create a statewide, mandatory technical guide for onsite sewage treatment technologies and to create mandatory licensing standards and continuing education requirements. The proposal also would have given the technical advisory board the authority to act as the final arbitrator for interpretation of the onsite sewage rules.

The committee also considered a revised proposal prepared by a representative of the North Dakota Association of Counties. The difference between the revised proposal and the earlier version was the earlier version would have required the Department of Environmental Quality to operate as the state agency overseeing the licensing and training of onsite sewage treatment system installers, while the revised proposal did not include such department oversight. The revised proposal would have created an onsite wastewater recycling technical advisory board to create uniform, statewide standards and would have required local public health units to adopt those standards. The revised proposal also would have allowed the advisory board to help with dispute resolution if a dispute arose between a licensed installer and the local regulatory body.

A committee member proposed as an alternative to a bill draft for the desired state agency to include the requested additional staffing and funding in the agency's budget proposal. The committee received testimony from a representative of the Department of Environmental Quality indicating the department cannot support the significant expansion of onsite regulatory responsibilities by the department due to upcoming budget concerns. According to the testimony, the department, along with other state agencies, have been directed to provide a budget that accounts for a significant reduction due to the current economic climate.

### **Conclusion**

The committee makes no recommendation regarding the sewage treatment system regulation study.

## **DISTRIBUTION OF FOOD IN RURAL COMMUNITIES STUDY**

### **Resolution History**

Senate Concurrent Resolution No. 4013 directed a Legislative Management study of food distribution in rural communities in the state and how the system can be improved.

### **Background**

Adequate access to healthy and affordable food can be a challenge for individuals, particularly rural residents. Many rural areas lack food retailers and are considered food deserts, or areas with limited supplies of fresh, affordable foods. In North Dakota, rural grocery stores have declined by 15 percent in the past 5 years. Access to food in rural areas may be limited by financial constraints or other factors, such as transportation challenges. Rural shoppers may rely on more expensive and less nutritious options, such as those available at convenience stores, or face a long drive to a town with a grocery store that stocks fresh produce, dairy products, and other staples.

### **United States Department of Agriculture**

According to the United States Department of Agriculture (USDA), a rural food desert is an area where at least 500 people, or at least 33 percent of the population, live 10 or more miles from a full-service grocery store. The United States Department of Agriculture has documented a higher incidence of obesity and diabetes in food deserts. Both the Institute of Medicine and the Centers for Disease Control and Prevention independently have recommended increasing the number of supermarkets in underserved areas would help reduce the childhood obesity rate.

Some rural residents and households are also food insecure, meaning those individuals cannot rely on having access to sufficient affordable and nutritious food at all times. According to a 2017 USDA Economic Research Service publication, food insecurity is strongly associated with chronic disease and poor health. Long-term food insecurity also can affect learning, development, productivity, physical and mental health, and family life.

### **North Dakota Rural Grocery Initiative**

The North Dakota Association of Rural Electric Cooperatives formed the North Dakota Rural Grocery Initiative to study the issue of distribution of food in rural communities and conduct statewide surveys to investigate the unique issues facing rural grocers. Many small rural grocery stores struggle with competition from larger chain stores, a shrinking customer base, and changing customer demands for a greater variety of products. Additionally, the food distribution system generally is designed for large volume purchases with short distances between stores, but this model does not adapt well when applied to rural areas.

The major suppliers of food to North Dakota grocers are grocery wholesalers and direct store delivery operators; however, according to a 2017 study of North Dakota rural grocers, nearly one-fourth of respondents purchase food at

big box retailers. While most of the surveyed grocers indicated they do not collaborate by purchasing food with other grocers, a significant number of respondents noted they would be interested in doing so. Many of the surveyed grocers participate in either the supplemental nutrition assistance program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children, or other anti-hunger programs; however, the grocers who stated they did not participate in the programs indicated they did not participate because the cost of engaging in the program is prohibitive or there were not enough customers that participated in the programs to qualify.

### **Testimony**

In its rural food distribution study, the committee received testimony from representatives of the Department of Commerce, the North Dakota Rural Grocery Initiative, the North Dakota Grocers Association, the Great Plains Food Bank, and the Creating a Hunger Free North Dakota Coalition. The committee's deliberations focused on what role, if any, the state should play in assisting rural grocers.

According to testimony from a representative of the Creating a Hunger Free North Dakota Coalition, food insecurity has increased in North Dakota over the last 10 years. At the end of 2019, approximately one in nine North Dakotans were unsure if they would have enough food to eat every day. Estimated health care costs resulting from food insecurity in the state are \$78 per person and over \$57 million annually.

A representative of the Department of Commerce testified regarding the state's demographics and shifts and trends in rural areas. According to the testimony, there is a direct relationship between out-migration and food insecurity. When out-migration occurs, an older population often is left, and those older populations typically do not have a strong household income.

The committee received testimony from a representative of the North Dakota Rural Grocery Initiative regarding the group's study on food distribution in rural communities and the unique issues rural grocers face. In 2014, 137 full-service grocery stores were operating in towns with 2,100 people or less in the state, and in 2019, only 98 of those stores remain in operation. Grocery store operators who can purchase a higher volume of products from suppliers receive a better price, but rural grocery stores often do not have a large enough customer base to generate the volume needed to be competitive with urban areas. Testimony indicated high operating costs and narrow profit margins make it difficult for rural grocers to keep up with building and infrastructure needs. According to the testimony, rural communities have gone to great lengths to keep their local grocery stores open, including forming nonprofits, cooperatives, or converting to community-owned stores, but those options often are a temporary fix and are difficult to sustain.

Committee members suggested the North Dakota Rural Grocery Initiative should approach the state universities to help conduct a study of the food distribution issue.

The committee received testimony from a representative of the Great Plains Food Bank, the only food bank in the state, indicating over \$74 million in SNAP benefits were distributed in 2018 to over 53,000 residents. It was noted the nutrition of low-income residents can improve if a local grocery store accepts SNAP benefits, and accepting SNAP benefits also can provide a guaranteed customer base for rural grocers.

Testimony from a representative of the North Dakota Rural Grocery Initiative noting the national SNAP program has begun implementing online shopping options on a state-by-state basis. According to the testimony, the only retailers in North Dakota set up to manage online SNAP transactions are Amazon and Walmart. It is financially feasible for national retailers to implement online SNAP transactions because those retailers conduct enough transactions to offset the costs, but other retailers are struggling to accommodate the extra cost. According to the testimony, smaller stores are concerned regarding the potential loss of online SNAP sales to national retailers.

A representative of the Wimbledon Community Grocery and Cafe testified the grocery store began operating as a nonprofit corporation 4 years ago as a last-ditch effort to keep the store open in a community with a population of just over 200. The store is the only full-service grocery store in a 25-mile radius around Wimbledon. Donations, fundraisers, grants, and volunteer management were used to replace existing infrastructure, hire additional labor, and research new products. Due to its nonprofit status, the store received several grants through the North Dakota Community Foundation to replace inefficient heating and cooling units. Testimony indicated another rural grocery store contacted the Wimbledon store regarding how to form a nonprofit corporation.

In response to concerns from committee members regarding how the state could assist rural grocery stores, testimony indicated the government could assist by providing grants for equipment purchases. According to the testimony, the state operates at least one transportation system through the Emergency Preparedness and Response Section of the State Department of Health, which is maintained to distribute pharmaceuticals in the case of emergencies, and the equipment needs to be operated occasionally to keep it in working order. Testimony indicated a partnership could be formed using existing state resources and assets.

The committee received testimony regarding a pilot project of the North Dakota Rural Grocery Initiative involving participating grocery stores ordering collectively to obtain a lower price on products due to the higher volume of products ordered, cross-stocking products at a redistribution hub, and the delivering of products by existing distributors. According to the testimony, three communities were interested in combining purchasing power to help reduce costs, and a financial assessment was conducted. Testimony indicated the financial assessment needs to be redone because more communities have indicated a desire to join.

The committee also received testimony regarding a climate-controlled grocery locker system involving lockers capable of holding ambient, frozen, and refrigerated products, an online grocery ordering software system, and a climate-controlled delivery truck. According to the testimony, the model is used throughout Australia, and the cost of a locker with 15 spots for refrigerated and frozen food is approximately \$33,000. According to the testimony, a store in the northwest region of the state is considering implementing a grocery locker system.

The committee received testimony indicating the COVID-19 pandemic has had some positive effects on rural grocers. According to testimony from a representative of the North Dakota Rural Grocery Initiative, data collected in April 2020 from a sampling of 20 percent of rural grocers indicated most stores experienced a sales surge, with some experiencing a surge of more than 100 percent. Rural stores adapted to the pandemic by providing curbside pickup, home delivery, designated shopping times for senior citizens and individuals with underlying health conditions, as well as offering store credit for those in need. According to the testimony, 38 percent of the sampled stores needed to hire additional employees.

In response to concerns from committee members regarding if state laws or regulations hinder rural grocers, testimony from stakeholders did not identify any specific state laws or regulations that pose a barrier for rural grocers. Committee members acknowledged the declining number of rural grocery stores in the state is an issue that has a real impact on North Dakota communities and residents, but expressed reluctance in interfering with free enterprise.

### Conclusion

The committee makes no recommendation regarding its rural food distribution study.

## SKILLED WORKFORCE STUDENT LOAN REPAYMENT AND SCHOLARSHIP PROGRAMS REPORTS

The committee received reports from the State Board of Higher Education regarding the skilled workforce student loan repayment and scholarship programs as required by Sections 1 and 2 of House Bill No. 1171. The programs were created by the 2019 Legislative Assembly to assist businesses in attracting and retaining talent in high-demand and emerging occupations. Known collectively as ND Career Builders, the workforce development programs have two components--scholarships for students enrolled in qualifying programs at state institutions and student loan repayment for employees in the state who graduated from qualifying programs.

In July 2019 the North Dakota Workforce Development Council and Job Service North Dakota created the first high-need and emerging occupations list, consisting of 75 occupations. The list, generated by objective data, is used to establish eligibility for both programs and is valid for a 2-year period.

The following summarizes the scholarship application status and private-sector funding for the ND Career Builders Scholarship as of June 2020:

<b>ND Career Builders Scholarship Program Statistics</b>	
Number of applications approved	35
Number of applications denied	11
Number of approved applications funded	35
Private-sector funds committed for approved applicants	\$100,473
State funds committed for approved applicants	\$100,468
Total funds disbursed to date (including private and state)	\$158,863
Average scholarship per approved applicant	\$5,741
Private-sector funds committed but no student applications received	\$108,650
Current enrolling institutions	Bismarck State College Dakota College at Bottineau Lake Region State College Lynnes Welding Training North Dakota State College of Science Rasmussen College - Fargo

Programs enrolled	Agriculture (3) Auto Body Repair & Refinishing Technology Automotive Technology (3) Building Construction Technology Construction Management Technology Cybersecurity & Computer Networks Diesel Technology (3) Electrical Technology (2) Energy Services & Renewable Technician Health Information Technician Heating, Ventilation & Air Conditioning Human Resources & Organizational Leadership HVAC/R Technology (3) Information & Communications Technology Instrumentation & Control Technology John Deere Ag Tech Land Surveying & Civil Engineering Technology (3) Lineworker (Electrical) Medical Assistant Pharmacy Technician Power Plant Technology Welding (3)
Graduated recipients (May 2020)	11
Number of unique donors committing funds	32
Repayment: Number	5
Repayment: Amount	\$27,000
Repayment: Recovered amount	\$5,450

The following summarizes the loan repayment application status and private-sector funding for the ND Career Builders Loan Repayment program as of June 2020:

<b>ND Career Builders Loan Repayment Program</b>	
Number of applications approved	5
Number of applications denied	2
Number of approved applications funded	5
Private-sector funds committed for approved applicants	\$33,302.58
State funds committed for approved applicants	\$33,302.58
Total funds disbursed to date (including private and state)	\$13,222.68
Average loan repayment per approved applicant	\$13,321
Private-sector funds committed but no student applications received	None
Number of unique donors committing funds	5
High-need or emerging occupation	Bus and Truck Mechanic Carpenter Mechanical Engineer Mobile Heavy Equipment Mechanic Transportation Engineer



# DEPARTMENT OF CORRECTIONS AND REHABILITATION REVIEW COMMITTEE

The Department of Corrections and Rehabilitation Review Committee was assigned two studies:

- Section 9 of House Bill No. 1015 (2019) directed a comprehensive study of the Department of Corrections and Rehabilitation (DOCR). The study must include:
  1. A review, with input from a consultant engaged by DOCR, of gender-responsive correctional and rehabilitation facility and service needs. The review must include:
    - a. The preferable location of facilities;
    - b. The service needs of individuals sentenced to DOCR; and
    - c. The impact on families of individuals sentenced to DOCR.
  2. An assessment of facilities at the Missouri River Correctional Center (MRCC), the James River Correctional Center (JRCC), and the State Hospital, with input from a consultant engaged by DOCR. The assessment must:
    - a. Include the DOCR master plan, staffing plan, comprehensive service delivery strategy, and cost estimates;
    - b. Be based on providing comprehensive services to those committed to the care, custody, and control of DOCR;
    - c. Include options for community-based and family-involved environments; and
    - d. Consider the opportunity for vocational and workforce development.
  3. A review of vocational opportunities, educational opportunities, workforce development, and medical and behavioral health treatment for those committed to the care, custody, and control of DOCR.
- House Concurrent Resolution No. 3015 (2019) directed a study of best practices to reduce offender recidivism, increase educational opportunities, prepare incarcerated offenders to rejoin their communities, establish and implement a community transitional housing program, including independent host homes, and encourage communities to reintegrate previously incarcerated individuals into society.

Committee members were Representatives Jon O. Nelson (Chairman), Richard G. Holman, and Randy A. Schobinger and Senators Jay Elkin, Tim Mathern, and Terry M. Wanzek.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## DEPARTMENT OF CORRECTIONS AND REHABILITATION STUDY

### Background

The 2019 Legislative Assembly appropriated \$229,678,076 from the general fund and \$41,955,889 from other funds to DOCR for the 2019-21 biennium. The appropriation for the department provided for an increase of 54.5 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 899.79.

Inmate counts through August 2020, as documented by DOCR, indicate an average inmate count for the 2019-21 biennium of 1,496 males and 196 females. The average inmate count for the 2017-19 biennium was 1,533 males and 206 females. The department reported an additional 92 males and 21 females sentenced to DOCR were being held in county jails in August 2020 due to the Coronavirus (COVID-19) pandemic.

### Adult Services Division

North Dakota Century Code Section 12-47-01 provides for the establishment of the North Dakota State Penitentiary (NDSP). The main prison complex in Bismarck houses maximum and medium security male inmates. In August 2020, NDSP housed 610 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, in August 2020, housed 419 male inmates. The Missouri River Correctional Center in Bismarck houses minimum security male inmates whose sentences are not less than 30 days or more than 1 year. The Adult Services Division offers addiction treatment services, a sex offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

### **Parole and Probation Division**

The Department of Corrections and Rehabilitation has 16 offices across the state staffed by parole and probation officers who manage offenders on parole or supervised probation and complete presentence investigations ordered by courts. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services.

The division operates or participates in drug court programs, GPS monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sex offenders, and contracts for services with halfway houses and the Bismarck Transition Center to provide transition services.

### **Dakota Women's Correctional and Rehabilitation Center**

During the 2003-05 biennium, DOCR began to contract with the Dakota Women's Correctional and Rehabilitation Center (DWCRC) in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at DWCRC consists of a 70-bed minimum security unit, a 45-bed medium security unit, and a 16-bed orientation unit. In May 2006, a 5-bed high security unit was added to the facility.

### **Division of Juvenile Services**

The Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center (YCC), which is located west of Mandan and is the state's secure juvenile correctional institution.

Juvenile programming at YCC includes drug and alcohol programming; child psychiatric and psychological services; sex offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

### **Tompkins Rehabilitation and Corrections Center**

The Tompkins Rehabilitation and Corrections Center TRCC is located on the State Hospital campus and historically has been operated by the Department of Human Services (DHS) in collaboration with DOCR. The center provides a cognitive behavioral treatment approach utilizing cognitive restructuring groups to reduce risks to reoffend. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males. The 2019 Legislative Assembly provided for DOCR to assume control of the 60-bed male unit of TRCC. The department has renamed the 60-bed male unit the James River Minimum Unit.

### **Free Through Recovery Program**

The 2017 Legislative Assembly provided for the establishment of a community behavioral health program as a term of parole or an alternative to incarceration. The Department of Corrections and Rehabilitation, in cooperation with DHS, developed and implemented the free through recovery program. The Department of Corrections and Rehabilitation reported the program eventually should grow to serve 600 people, but there is a lack of services available in certain geographic areas.

### **Pretrial Services**

The 2019 Legislative Assembly appropriated \$755,034 from the general fund and 7 FTE positions for a pretrial services pilot program in three judicial districts.

## **Testimony and Committee Considerations**

In its study of DOCR, the committee received testimony from representatives of DOCR, DWCRC, and The Moss Group, Inc. and The CGL Group (the consultants). The committee also toured JRCC, TRCC, the State Hospital, MRCC, and NDSP.

### **Department of Corrections and Rehabilitation Facilities**

The Department of Corrections and Rehabilitation contracted with the consultants to assist the committee in its study of DOCR. The department reported the bid included a total project cost of \$458,830, \$16,170 less than the \$475,000 available for the study. The consultants conducted site visits at each DOCR facility, the State Hospital, and DWCRC. The consultants also held visioning sessions and workshops with DOCR staff, state and local partners, community partners, advocacy groups, and clergy.

The consultants, which were requested to explore multiple options for DOCR based on the department's vision for its 10-year master plan, reported the following priorities were considered in the development of options for DOCR:

- Expand community services capacity;
- Do not increase the number of beds;
- Relocate female residents from DWCRC to YCC using a phased approach;
- Continue using DWCRC for community-based services;
- Modify or relocate juvenile facilities; and
- Complete a phased program for deferred maintenance.

The consultants presented two options to address facility needs of DOCR. Option 1 converts YCC to a women's campus, maintains DWCRC as a community corrections resource center, and provides for 350 beds at JRCC and 100 beds at MRCC for male inmates, with estimated costs as follows:

Description	2021-23 Biennium	2023-25 Biennium	2025-27 Biennium	2027-29 Biennium	2029-31 Biennium	Total Estimated Cost
Develop regional reporting centers for females	\$500,000	\$250,000				\$750,000
Improve Hickory and Maple Cottages at YCC	3,781,800					3,781,800
Upgrade YCC to include a vocation and employment center	1,612,250					1,612,250
Deferred maintenance at YCC	1,332,985	1,332,985				2,665,970
Expand community reporting centers for males	750,000	750,000				1,500,000
Deferred maintenance at JRCC	2,332,470	2,332,470				4,664,940
Renovate JRCC			\$12,441,150			12,441,150
Upgrade MRCC		15,563,000				15,563,000
Deferred maintenance at NDSP	1,772,020	886,010	886,010			3,544,040
Renovate NDSP for special beds		1,911,000				1,911,000
Renovate or replace west housing unit at NDSP				\$4,170,000		4,170,000
Construct new 20-bed juvenile facility		6,000,000				6,000,000
Construct two new 8-bed juvenile residential centers			1,680,000		\$1,680,000	3,360,000
<b>Total</b>	<b>\$12,081,525</b>	<b>\$29,025,465</b>	<b>\$15,007,160</b>	<b>\$4,170,000</b>	<b>\$1,680,000</b>	<b>\$61,964,150</b>

The consultants reported option 2 provides for the design and construction of a new 100-bed female facility and for YCC to be converted into a 100-bed male regional transition center, with estimated costs as follows:

Description	2021-23 Biennium	2023-25 Biennium	2025-27 Biennium	2027-29 Biennium	2029-31 Biennium	Total Estimated Cost
Develop regional reporting centers for females	\$500,000	\$250,000				\$750,000
Upgrade Hickory Cottage at YCC	2,673,000					2,673,000
Design and construct 100-bed female facility		27,500,000				27,500,000
Expand community reporting centers for males	750,000	750,000				1,500,000
Deferred maintenance at JRCC		2,332,470	\$2,332,470			4,664,940
Deferred maintenance at YCC	141,765		2,612,018			2,753,783
Repurpose YCC for 100-bed male re-entry facility				\$21,264,750		21,264,750
Renovate JRCC		6,220,575	6,220,575			12,441,150
Upgrade MRCC		7,781,500	7,781,500			15,563,000
Deferred maintenance at NDSP		2,658,030		886,010		3,544,040
Renovate NDSP for special beds	1,911,000					1,911,000
Renovate or replace west housing unit at NDSP					\$4,170,000	4,170,000
Construct new 20-bed juvenile facility		6,000,000				6,000,000
Construct two new 8-bed juvenile residential centers		1,680,000			1,680,000	3,360,000
<b>Total</b>	<b>\$5,975,765</b>	<b>\$55,172,575</b>	<b>\$18,946,563</b>	<b>\$22,150,760</b>	<b>\$5,850,000</b>	<b>\$108,095,663</b>

According to the consultants, both option 1 and option 2:

- Use YCC to initiate the transfer of female inmates from DWCRC;
- Recommend similar internal renovations to JRCC, MRCC, and NDSP and the maintenance of existing facility missions;
- Include funding to construct three new juvenile facilities, including a 20-bed secure facility and two 8-bed residential centers; and
- Assume an expansion of locations and staff for the Parole and Probation Services Division.

### **Pretrial Services**

The committee received testimony indicating the goal of pretrial services is to reduce incarceration, criminal activity, and "failure to appear" at trial while connecting defendants with services in the community. Testimony indicated pretrial services include collection and analysis of defendant information, provision of information to the court, and supervision of defendants. Testimony also indicated the pilot project would randomly select defendants in the North Central, South Central, and East Central Judicial Districts to receive pretrial services with the intention to be more selective in the population of defendants selected to receive pretrial services in the future.

The committee received testimony indicating support from the Standing Rock Reservation to work with its members. Testimony indicated the pretrial services pilot program launched on July 1, 2020, and as of September 2020, 89 of the 110 individuals interviewed to participate in the pretrial pilot program were placed on supervision with 9 cases being closed successfully and 2 absconding.

### **Recommendations**

The committee recommends DOCR and the Legislative Assembly support option 1 for future capital project and operations requests.

## **BEST PRACTICES TO REDUCE RECIDIVISM STUDY**

### **Background**

In 2005 the Legislative Assembly created the Commission on Alternatives to Incarceration through House Bill No. 1473 (2005), codified as Section 54-35-24. The commission, which studied sentencing alternatives, mandatory sentences, treatment options, and various criminal justice-related issues during each interim from 2005-06 through 2015-16, expired on August 1, 2017.

The 2015-16 interim Incarceration Issues Committee studied pretrial sentencing alternatives, treatment options, and other related issues, which included an analysis of justice reinvestment reforms to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. The committee recommended House Bill No. 1041 (2017), which authorized sentence reductions for good conduct and medical paroles, authorized a court to use incarceration for a period not to exceed 30 days in lieu of a petition for revocation of probation, and required a sentencing court to sentence an individual who has pled guilty to, or has been found guilty of, a Class C felony offense or Class A misdemeanor offense to a term of probation at the time of initial sentencing, except for a violent offense.

The 2015-16 interim Human Services Committee reviewed behavioral health-related information, including an overview of behavioral health, an overview of a behavioral health system of care, key legal obligations related to behavioral health services, and the DHS behavioral health services delivery system. The committee recommended Senate Bill No. 2038 (2017), which extended the holding period from 24 to 72 hours for emergency involuntary commitments for individuals with a serious physical condition or illness, and House Bill No. 1040 (2017), which would have appropriated funds to DHS to allow for drug and alcohol programming, support services, and targeted case management services for individuals with severe mental illness and severe emotional disturbance. Although House Bill No. 1040 was amended to remove a \$12 million appropriation for targeted case management services, the bill included funding for children's prevention and early intervention behavioral health services, peer-to-peer support services, and family-to-family support services.

Senate Bill No. 2015 (2017) directed DOCR to establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions as a term and condition of parole and probation and as a sentencing alternative under Section 12.1-32-02. The bill appropriated \$7 million to DHS for the purpose of implementing the community behavioral health program during the 2017-19 biennium and created the Justice Reinvestment Oversight Committee to study the implementation of the community behavioral health program and justice reinvestment policies.

### **Testimony and Committee Considerations**

The committee received information and testimony from representatives of DOCR which indicated DOCR provides a multitude of options in terms of educational and vocational opportunities for individuals incarcerated within DOCR facilities. In addition to various educational and enrichment programs, testimony indicated DOCR offers general education degree testing, adult basic education, high school education, and career and technical education. The committee received testimony indicating studies have showed significant reductions in recidivism rates for individuals participating in correctional industry programs, and minimum security inmates are eligible for work release to establish employment with private employers in the community. Testimony indicated individuals who work for Roughrider Industries for a period of 24 months or longer are nearly half as likely to return to prison than individuals who do not participate. Roughrider Industries employs a total of 76 individuals at NDSP, 44 individuals at JRCC, and 28 individuals at MRCC.

According to testimony, although the availability of community-based treatment has increased, certain individuals still may be sentenced to DOCR to receive treatment. Testimony also indicated DOCR is continuing to engage outside behavioral health providers for treatment services. According to the testimony, the number of individuals in parole and probation increased 260 percent from 1992 to 2019. The Department of Corrections and Rehabilitation has approximately 94 staff managing the parole and probation caseload, with an average ratio of 74 cases for every 1 officer. The committee received testimony indicating, of the young adults on probation or parole, 41 percent end in revocation; of the Native Americans on probation or parole, 47 percent end in revocation; and of the women on probation or parole, 34 percent end in revocation. The committee received testimony indicating although there is opportunity for improvement and innovation in the area of transitional housing, independent host homes may not be the most beneficial option as leveraging existing resources and improving the delivery of those resources would better improve outcomes.

### **Recommendation**

The committee makes no recommendation regarding the study of the best practices to reduce recidivism.

# EDUCATION FUNDING FORMULA REVIEW COMMITTEE

Senate Bill No. 2065 (2019) created an Education Funding Formula Review Committee consisting of the chairmen of the standing Education Committees of the House of Representatives and the Senate; three additional members of the Senate, two of which must be appointed by the Majority Leader of the Senate and one of which must be appointed by the Minority Leader of the Senate; and three additional members of the House of Representatives, two of which must be appointed by the Majority Leader of the House of Representatives and one of which must be appointed by the Minority Leader of the House of Representatives. Members appointed to the committee were required to have a secure knowledge of the current K-12 funding formula. The committee was required to study the K-12 education funding formula, including the components, adjustments, and weighting factors of the formula.

In addition, the committee was assigned the following responsibilities:

1. Senate Bill No. 2013 (2019) provided for a study of school transportation, including district routes, expenditures, reimbursement, and possible efficiencies.
2. The Legislative Management assigned the committee the responsibility to receive the following reports from the Superintendent of Public Instruction regarding:
  - a. The financial condition of school districts (North Dakota Century Code Section 15.1-02-09); and
  - b. Annual school district employee compensation reports (Section 15.1-02-13).

Committee members were Senators Donald Schaible (Chairman), Joan Heckaman, Nicole Poolman, and David S. Rust and Representatives David Monson, Marvin E. Nelson, Mark S. Owens, and Mark Sanford.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## ELEMENTARY AND SECONDARY EDUCATION STATE AID AND FUNDING FORMULA STUDY

Senate Bill No. 2065 directed a study of the K-12 education funding formula, including the components, adjustments, and weighting factors of the formula. The committee invited several school district superintendents and business managers to participate in the funding formula study.

### Background

#### North Dakota Constitutional Directives

Section 1 of Article VIII of the Constitution of North Dakota provides:

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Section 1 has been unchanged since its enactment in 1889.

Section 2 of Article VIII of the Constitution of North Dakota follows with the directive that:

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Section 3 of Article VIII of the Constitution of North Dakota requires "instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind."

Section 4 of Article VIII of the Constitution of North Dakota directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

## History of Education Funding

Since the 1930s the Legislative Assembly has attempted to meet its constitutional directives by providing some level of financial assistance to school districts. In the late 1950s the Legislative Assembly initiated a foundation aid program based on a uniform 21-mill county levy and a supplemental state appropriation to ensure school districts would receive 60 percent of the cost of education from nonlocal sources.

For several years, the foundation aid program remained essentially unchanged. However, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt such issues in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. Per student payments were more than doubled and weighting factors that recognized four classes of high schools were made part of the education formula. By the late 1970s, a new funding category encompassing seventh and eighth grade students had been created and fiscal protections were instituted for school districts that experienced declining enrollment. In 1979, the Legislative Assembly appropriated \$208.4 million for the foundation aid program and added an additional \$1 million to pay for free public kindergartens.

The next major development affecting education finance occurred with the approval of Initiated Measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated Measure No. 6 also provided for a tax credit that made the 21-mill county levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that otherwise would have been derived from the levy.

Discussions continued on issues of funding inequities among school districts. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations would seem to justify. Both the Legislative Assembly and legislative interim committees continued to evaluate the impact of weighting factors, considered the effects of increasing the mill levy equalization factor, and explored the excess mill levy grant concept. While individuals and organizations articulated the need to alter the state's education funding system, little agreement was reached beyond recommending increases in the level of per student aid.

## Litigation

In 1989 several school districts and parents joined in suing the state to have North Dakota's system of public school financing declared unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity and those disparities were directly and unconstitutionally based upon property wealth. Four years later a district court declared the state's system of education financing to be in violation of Sections 1 and 2 of Article VIII and Sections 21 and 22 of Article I of the Constitution of North Dakota. The decision was appealed and in January 1994, by a one-vote margin, the North Dakota Supreme Court did not uphold the lower court's ruling. The Supreme Court indicated areas in need of legislative attention but, unlike courts in other states, it did not mandate specific legislative action.

Within a decade after the court decision, the Legislative Assembly's commitment to education funding had exceeded \$665 million. In 2003, the state was providing educational services to 99,174 public school students--50 percent of whom were being educated in the state's eight largest school districts. The remaining students were distributed across 205 other districts. Best estimates indicated that by 2013, the number of enrolled students could fall below 90,000. Against a backdrop of declining student numbers, rising expectations for services, and a belief the available resources were both insufficient and inequitably distributed, another lawsuit was brought against the state by the school districts of Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City.

*Williston Public School District No. 1 v. State of North Dakota* did not go to trial. Instead, the plaintiffs and the defendants entered a settlement agreement in which it was stated:

[I]t is desirable and beneficial for them and for the citizens of the State of North Dakota to stay this Act and provide the North Dakota Legislative Assembly the opportunity to settle, compromise, and resolve this Action in the manner and on the terms and conditions set forth in this Agreement. The terms and conditions required that the Governor, by executive order, create the North Dakota Commission on Education Improvement and submit to the Legislative Assembly in 2007 an executive budget that includes at least \$60 million more in funding for elementary and secondary education than the amount appropriated by the Legislative Assembly in 2005.

## **North Dakota Commission on Education Improvement**

The North Dakota Commission on Education Improvement, as initially configured, consisted of the Lieutenant Governor--as the governor's designee, the Superintendent of Public Instruction, four members of the Legislative Assembly, four school district administrators, and three nonvoting members representing education interest groups. The commission was instructed to recommend ways in which the state's system of delivering and financing public elementary and secondary education could be improved, and to specifically address the adequacy of education, the equitable distribution of funding, and the allocation of funding.

The recommendations of the North Dakota Commission on Education Improvement became the basis for Senate Bill No. 2200 (2007), which provided a new education funding formula. The bill consolidated education funding that had been assigned to a variety of existing funding categories and established new weighting factors that reflected the added costs of providing education to certain categories of students and the added costs of providing various statutorily mandated services. In addition, the new formula factored in the variable cost of providing services and programs in small, medium, and large school districts. The Legislative Assembly increased the availability of capital improvement loans for needy school districts, provided increased funding for new career and technical education centers and programs, and provided funding for full-day kindergarten programs. The Legislative Assembly reauthorized the North Dakota Commission on Education Improvement and directed it focus its attention on developing recommendations regarding educational adequacy.

### **2007-08 Interim**

After the 2007 legislative session, the North Dakota Commission on Education Improvement contracted with Lawrence O. Picus and Associates (Picus) to identify the resources needed to ensure an adequate education for all students. Picus began with the premise that adequacy requires all students to be taught the state's curriculum and strategies must be deployed to use resources in ways that would double student performance on state tests over 4 to 6 years. Picus determined very early in its efforts that while North Dakota students performed reasonably well on state tests, only 30 to 40 percent of North Dakota students performed at or above the proficiency standard measured by the National Assessment of Educational Progress. It was Picus' determination that North Dakota students would need to achieve at much higher levels if they were to be deemed fully prepared, upon high school graduation, for either college or the workplace. Picus concluded existing state per student payments, coupled with the yield of 185 mills on 88.5 percent of the state average imputed valuation per student, amounted to approximately \$7,024 per student, and to achieve adequacy, the expenditure per student would need to be \$7,293.

Picus also insisted expending a specific dollar amount per student would not achieve the desired results unless the expenditures were linked to certain programmatic strategies that guaranteed the desired results. Without such linkages, the final effect would be nothing other than the existing education system at a much higher cost to taxpayers. Picus' recommendations were centered around prototypical schools having 432 students in the elementary grades, 450 students in the middle grades, and 600 students at the high school level.

### **2009 Legislative Session**

In 2009, after reviewing the Picus report, the North Dakota Commission on Education Improvement made recommendations to the Legislative Assembly, many of which were enacted in House Bill No. 1400. At the conclusion of the 2009 legislative session, the North Dakota Commission on Education Improvement began its third and final interim effort and provided its recommendations to the 2011 Legislative Assembly.

### **2011 Legislative Session**

As had its predecessors, the 2011 Legislative Assembly incorporated the recommendations put forth by the North Dakota Commission on Education Improvement through the enactment of Senate Bill No. 2150 and Senate Bill No. 2013. The amount appropriated for the grants - state school aid line item was \$918,459,478. In addition, the Legislative Assembly provided \$16 million for special education contracts and \$48.5 million for transportation.

### **Property Tax Relief Legislation**

While educational equity and adequacy continued to be dominant legislative concerns, additional time and attention was now being given to the desire for property tax relief. In 2007, the Legislative Assembly enacted property tax relief through the use of income tax credits and transferred \$115 million from the permanent oil tax trust fund to the state general fund to offset anticipated revenue losses resulting from the credits. Due to inherent administrative difficulties resulting from the use of income tax credits for property tax relief, the 2009 Legislative Assembly instituted a statewide system of property tax relief through state-funded school district mill levy reductions. The biennial cost of the program was \$299 million. By 2011 the program's price tag had risen to \$341.8 million and there existed concerns regarding the overall effectiveness of the mill levy reduction grant program as a mechanism for property tax relief, the program's potential to result in the rededication of locally generated revenues to other purposes, and long-term sustainability.



## State School Aid and Integrated Property Tax Relief

### 2013 Legislative Session

When the Legislative Assembly convened in January 2013, the principal education funding package contained a new proposal for funding elementary and secondary education, which included property tax relief provided through an integrated formula. Introduced as House Bill No. 1319, the new proposal was defeated on the morning of the 80<sup>th</sup> day of the legislative session, but the content was attached later as an amendment to House Bill No. 1013 and enacted. The legislative appropriation for the state school aid program followed substantially the executive budget recommendation to integrate property tax relief in the K-12 state school aid funding formula. The formula change discontinued the mill levy reduction grant program and provided the state will determine an adequate base level of support necessary to educate students by applying an integrated payment rate to the weighted student units. This base level of support will be provided through a combination of local tax sources, local revenue, and state integrated formula payments. The local funding requirement is set at 60 mills and a percentage of identified local in lieu of property tax sources and local revenues. Base level support not provided by local sources is provided by the state through the integrated formula payment. In addition, school districts are allowed an additional 10-mill levy for general fund purposes, an additional 12-mill levy for miscellaneous purposes, and a 3-mill levy for a special reserve fund. The legislation provided for a district's weighted student units to be multiplied by integrated formula payment rates of \$8,810 during the 1<sup>st</sup> year of the 2013-15 biennium and \$9,092 during the 2<sup>nd</sup> year, an inflationary increase based on total expenditures per student suggested by Picus during the 2008 study conducted for the North Dakota Commission on Education Improvement.

Minimum and maximum payment levels were established using a statutorily defined baseline funding level that includes:

- All state aid received by the district in accordance with Chapter 15.1-27 during the 2012-13 school year;
- The district's 2012-13 mill levy reduction grant, as determined in accordance with Chapter 57-64, as it existed on June 30, 2013;
- An amount equal to that raised by the district's 2012 general fund levy or that raised by 110 mills of the district's 2012 general fund levy, whichever is less;
- An amount equal to that raised by the district's 2012 long-distance learning and educational technology levy;
- An amount equal to that raised by the district's 2012 alternative education program levy; and
- An amount equal to:

75 percent of all revenue received by the school district and reported under code 2000 of the North Dakota School District Financial Accounting and Reporting Manual, as developed by the Superintendent of Public Instruction in accordance with Section 15.1-02-08;

75 percent of all mineral revenue received by the school district through direct allocation from the State Treasurer and not reported under code 2000 of the North Dakota School District Financial Accounting and Reporting Manual, as developed by the Superintendent of Public Instruction in accordance with Section 15.1-02-08;

75 percent of all tuition received by the school district and reported under code 1300 of the North Dakota School District Financial Accounting and Reporting Manual, as developed by the Superintendent of Public Instruction in accordance with Section 15.1-02-08, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility and tuition received for the provision of an adult farm management program;

75 percent of all revenue received by the school district from payments in lieu of taxes on the distribution and transmission of electric power;

75 percent of all revenue received by the school district from payments in lieu of taxes on electricity generated from sources other than coal;

All revenue received by the school district from mobile home taxes;

75 percent of all revenue received by the school district from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3);

All telecommunications tax revenue received by the school district; and

All revenue received by the school district from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans' credit.

From this baseline total, the legislation called for a subtraction of 60 mills multiplied by the district's taxable valuation, not to exceed the amount in dollars subtracted the prior year plus 12 percent, and a subtraction of the specified portion of the in lieu of taxes revenues listed in the preceding paragraph.

School district boards had been authorized to levy an amount sufficient to cover a multitude of expenses; however, the enactment of House Bill No. 1013 provided for the consolidation of these levies. The bill authorized the board of a school district to levy:

- A tax not exceeding the amount in dollars the school district levied for the prior year, plus 12 percent, up to a levy of 70 mills on the taxable valuation of the district, for any purpose related to the provision of educational services;
- No more than 12 mills on the taxable valuation of the district, for miscellaneous purposes and expenses;
- No more than 3 mills on the taxable valuation of the district for deposit into a special reserve fund; and
- No more than the number of mills necessary, on the taxable valuation of the district, for the payment of tuition.

### **2013-14 Interim**

During the 2013-14 interim, the Education Funding Committee was assigned a study, pursuant to Section 58 of House Bill No. 1013 (2013), of state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education in the state. The dollar amounts by which a district's weighted student units were multiplied, to arrive at a funding level for the 2013-15 biennium, were determined by applying an inflationary increase to the "adequate" funding level the Picus study recommended as part of its final report to the North Dakota Commission on Education Improvement in 2008. Given the passage of 5 years and changes in the state's economic and demographic circumstances, the Legislative Assembly determined it would be appropriate to review and clarify state-level and local-level responsibility for the equitable and adequate funding of elementary and secondary education. To meet its study directive, the interim Education Funding Committee asked Picus to review its 2008 recommendations and conduct a recalibration using an evidence-based model and the most recent data available. Based on available information and assumptions, Picus recommended recalibrated weighting factors and increased payment rates from the 2013-15 biennium levels of \$8,810 and \$9,092 to \$9,347 and \$9,442. The interim committee did not recommend the Picus funding model. The committee recommended Senate Bill No. 2031 (2015) relating to the funding of elementary and secondary education. The bill set per student funding rates of \$9,482 for the 1<sup>st</sup> year of the biennium and \$9,766 for the 2<sup>nd</sup> year. The rate of \$9,482 was determined by subtracting \$236, which represented the 8 days of professional development Picus had recommended, but which the committee did not require, from the Picus recommendation of \$9,442. The remainder was then increased by 3 percent to arrive at \$9,482. A 2<sup>nd</sup> year increase of 3 percent brought the 2<sup>nd</sup> year payment rate to \$9,766.

### **2015 Legislative Session**

In 2015, the Legislative Assembly approved Senate Bill No. 2031 which provided increases in the integrated payment rate of 3 percent per year during the 2015-17 biennium, based on the integrated formula payment rate during the 2<sup>nd</sup> year of the 2013-15 biennium. Integrated payment rates were set at \$9,365 during the 1<sup>st</sup> year and \$9,646 for the 2<sup>nd</sup> year of the 2015-17 biennium. In addition, the bill removed the sunset clause on the K-12 integrated formula for state school aid, adopted by the 2013 Legislative Assembly. The 2015 Legislative Assembly also approved Senate Concurrent Resolution No. 4003, which proposed a constitutional amendment to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for the most recently completed biennium for education-related purposes. The resolution was approved by voters in November 2016. In 2016, due to revenue shortfalls during the 2015-17 biennium, the Governor ordered two allotments totaling 6.55 percent and transfers from the foundation aid stabilization fund to offset foundation aid reductions made by executive action totaled \$116,053,293.

### **2017 Legislative Session**

In 2017, the Legislative Assembly approved House Bill No. 1324, which included an adjustment to set the integrated payment rate at \$9,646 for each year of the 2017-19 biennium, the same as the 2<sup>nd</sup> year of the 2015-17 biennium.

In House Bill No. 1013, the Legislative Assembly provided an appropriation of \$1,935,204,163, of which \$1,334,657,258 was from the general fund, \$295,000,000 from the foundation aid stabilization fund, and \$305,546,905 from the state tuition fund for state school aid integrated formula payments. Of the \$295,000,000 provided from the foundation aid stabilization fund, \$185,000,000 was considered one-time funding. This level of funding represented an increase of \$18,564,163, including a decrease in funding of \$246,795,449 from the general fund and increases in funding of \$178,946,707 from the foundation aid stabilization fund and \$86,412,905 from the state tuition fund, from the 2015-17 biennium adjusted appropriation for integrated formula payments of \$1,916,640,000. Increases in state school aid integrated formula payments included the cost to continue the 2015-17 biennium 2<sup>nd</sup> year integrated formula payment increase (\$54,000,000), cost of projected student growth (\$57,700,000), and cost associated with an increase in the English language learner weighting factors approved by the 2015 Legislative Assembly and effective July 1, 2017

(\$900,000). The increased costs were partially offset by increases in the local cost-share, including local property tax sources and local revenue. The Legislative Assembly, in Senate Bill No. 2272, also provided one-time funding of \$6,000,000 from the foundation aid stabilization fund to the Superintendent of Public Instruction for rapid enrollment grants during the 2017-19 biennium.

### **2017-18 Interim**

During the 2017-18 interim, the Education Funding Committee was assigned, pursuant to House Bill No. 1318 (2017), a study of how state aid for elementary and secondary education is determined and distributed under the state aid funding formula; the impact of state aid; potential changes to the funding formula to ensure equity, adequacy, and sustainability; the delivery and administration of elementary and secondary education in the state; and the short- and long-term policy and statutory changes that may result from or be necessitated by 21<sup>st</sup> century technological advances and global economics. In addition, pursuant to House Bill No. 1423 (2017), the committee was assigned a study of the in lieu of property tax portion of the elementary and secondary education funding formula for the purpose of identifying and addressing any inequities in the application of the formula. The committee did not make a recommendation regarding these studies; however, information gathered by the committee was the basis for several bills introduced during the 2019 legislative session.

### **2019 Legislative Session**

In 2019, the Legislative Assembly approved Senate Bill No. 2265, which included several funding formula changes and Senate Bill No. 2013, which provided \$2,098,202,429, of which \$1,610,438,429 is from the general fund, \$110,000,000 is from the foundation aid stabilization fund, and \$377,764,000 is from the state tuition fund, for state school aid integrated formula payments. This level of funding represented an increase of \$162,998,266, including increases in funding of \$275,781,171 from the general fund and \$72,217,095 from the state tuition fund offset by a decrease in funding from the foundation aid stabilization fund of \$185,000,000, from the 2017-19 biennium appropriation for integrated formula payments of \$1,935,204,163. Increases in integrated formula payments included \$54,000,000 for costs associated with projected student growth and \$109,000,000 for state school aid formula changes. Senate Bill No. 2265 included adjustments to:

- Convert the school calendar from days to hours;
- Provide rapid enrollment grants in the 1<sup>st</sup> year of the biennium and for a phase-in of on-time funding beginning with the 2020-21 school year;
- Reset baseline funding to the 2018-19 school year;
- Provide increases in transition minimum payments of 1 percent over the new baseline in the 1<sup>st</sup> year of the biennium and 2 percent over the new baseline in the 2<sup>nd</sup> year of the biennium;
- Reduce, beginning with the 2020-21 school year, total baseline funding and baseline funding per weighted student unit for districts that become elementary school districts;
- Phase out, beginning in the 2021-22 school year, the baseline funding per weighted student unit minimum. The changes provide for a 15 percent reduction of the amount by which the district's baseline funding per weighted student unit exceeds the payment provided per weighted student unit. For each year after the 2021-22 school year, the reduction percentage is increased by an additional 15 percent until it is equal to the payment provided per weighted student unit. The changes also provide weighted student units over the baseline weighted student units are reimbursed at the formula payment rate, instead of the baseline funding per weighted student unit rate;
- Phase out, beginning in the 2021-22 school year, the dollar amount transition minimum. The changes provide for a 15 percent reduction in the dollar amount transition minimum for the 2021-22 school year and an additional 15 percent reduction each school year thereafter;
- Increase the per student payment rate by 2 percent each year of the biennium, to provide \$9,839 per weighted student unit in the 2019-20 school year and \$10,036 per weighted student unit in the 2020-21 school year;
- Increase transition maximum payments by 5 percent each year of the 2019-21 biennium;
- Increase the local property tax deduction calculation each year over a 5-year period, beginning in the 2020-21 school year, to transition all districts to a deduction of 60 mills in the 2025-26 school year;
- Allow school districts, for taxable years beginning after December 31, 2018, to levy additional tax to recover the increase in the property tax deduction in the state school aid formula until all districts are levying and deducting 60 mills in the state school aid formula;
- Reduce the deduction for in lieu of revenue to 75 percent for all revenue types listed, exempt tuition from nonresident students residing in a state with which the state has not entered a cross-border education contract, exempt tuition received from an adjacent school district by certain accepting school districts, and reduce all in lieu

of revenue types by the percentage of mills levied in 2018 by the school district for sinking and interest relative to the total mills levied in 2018;

- Provide the Superintendent of Public Instruction use funding provided for state aid to pay South Dakota if more North Dakota students attend South Dakota schools; and
- Require admitting school districts meeting certain criteria to charge 200 percent of the statutory tuition payment calculation or \$4,000, whichever is greater, and that the tuition received by these school districts is not deducted in the formula.

### **Foundation Aid Stabilization Fund**

Prior to December 8, 2016, the principal of the foundation aid stabilization fund was available only upon order of the governor to offset foundation aid reductions made by executive action due to a revenue shortfall. Section 54-44.1-12 provided the director of the budget may order an allotment to control the rate of expenditures of state agencies. This section provided an allotment must be made by a specific fund and all departments and agencies that receive money from a fund must be allotted on a uniform percentage basis, except that appropriations for foundation aid, transportation aid, and special education aid only may be allotted to the extent the allotment can be offset by transfers from the foundation aid stabilization fund.

In November 2016, voters approved a measure proposed by Senate Concurrent Resolution No. 4003 (2015), which amended the Constitution of North Dakota to allow the Legislative Assembly to appropriate or transfer the principal balance of the foundation aid stabilization fund in excess of 15 percent of the general fund appropriation for state school aid for education-related purposes.

In 2017, the Legislative Assembly approved Senate Bill No. 2272 and House Bill No. 1155, which amended Section 54-44.1-12 to provide any reductions to the general fund appropriation to the Department of Career and Technical Education for grants to school districts due to allotment also are offset by funding from the foundation aid stabilization fund. In addition, Senate Bill No. 2272 created a new section to Chapter 54-27 to provide for purposes of Section 24 of Article X of the Constitution of North Dakota, education-related purposes means purposes related to public elementary and secondary education and state aid to school districts means general fund appropriations for state school aid, transportation aid, and special education aid in the Department of Public Instruction (DPI), as well as general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education.

The 2017-19 biennium appropriation for integrated formula payments, transportation aid, and special education grants totaled \$2,009,904,163, of which \$1,409,357,258 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education totaled \$22,854,100 during the 2017-19 biennium. Based on this level of funding from the general fund during the 2017-19 biennium, the Office of Management and Budget, in its 2019-21 executive budget documents, reported a required reserve balance of \$214,831,704 for the 2019-21 biennium.

The Legislative Assembly, in Senate Bill No. 2013 (2019), appropriated \$111.2 million from the foundation aid stabilization fund for integrated formula payments (\$110 million) and for a one-time state automated reporting system rewrite (\$1.2 million). In addition, the Legislative Assembly, in Senate Bill No. 2265 (2019), provided one-time funding from the foundation aid stabilization fund for music education grants (\$800,000) and rapid enrollment grants in the 1<sup>st</sup> year of the biennium (\$3 million). The Legislative Assembly also approved Senate Bill No. 2214 (2019) to provide for a transfer of \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the 2019-21 biennium. In addition to the transfer, Senate Bill No. 2214 provides legislative intent that the 67<sup>th</sup> Legislative Assembly appropriate \$110 million from the foundation aid stabilization fund to DPI for providing ongoing funding for state school aid and transfer \$75 million from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the 2021-23 biennium.

In 2019, the Legislative Assembly provided \$2,178,702,429 for integrated formula payments, transportation aid, and special education grants during the 2019-21 biennium, of which \$1,690,938,429 is provided from the general fund. In addition, general fund appropriations for career and technical education grants to school districts and area centers in the Department of Career and Technical Education totaled \$24,887,780 during the 2019-21 biennium. Based on this level of funding from the general fund during the 2019-21 biennium, it is anticipated the required reserve balance in the foundation aid stabilization fund for the 2021-23 biennium will be approximately \$257,373,931, \$42,542,227 more than the reserve required for the 2019-21 biennium.

## **Elementary and Secondary Education State Aid Formula - Selected Provisions**

### **School District Hold Harmless Calculations - Transition Minimum and Maximum Adjustments**

The committee reviewed the use of transition minimum and maximum adjustments in the state school aid formula. When the state school aid formula was implemented during the 2013-15 biennium, hold harmless calculations were included to avoid disrupting school budgets. Districts with transition minimum and maximum adjustments are not considered to be on the state school aid formula.

#### **Transition Minimum Adjustments**

Transition minimum adjustments apply to those districts that were above the per student payment rate when the formula was implemented. Districts above the formula amount received a transition minimum to hold the districts harmless under the new formula. Two hold harmless minimum calculations--baseline funding per weighted student unit and total baseline funding dollars--guaranteed school districts would not receive less funding per weighted student unit or in total than the funding received during the 2012-13 school year. The total dollar baseline guaranteed funding regardless of enrollment decline and the per student baseline provided a district could not receive less money per student than the district received in the 2012-13 school year, even if the per student payment from all sources exceeded the formula per student payment. In addition, new students generate the same per student funding as the baseline set during the 2012-13 school year. In 2019, the Legislative Assembly reset school district baseline funding to the 2018-19 school year which, for districts receiving minimum payments, was the same minimum based on the 2012-13 school year. Transition minimum school districts received a 2 percent increase each year of the 2013-15 and 2015-17 bienniums to provide a minimum of 108 percent of the district's baseline funding per weighted student unit multiplied by the district's prior year weighted student units, or 100 percent of the district's baseline funding dollars, whichever is greater. There was no increase in the transition minimum adjustment during the 2017-19 biennium. In 2019, the Legislative Assembly provided a 1 percent increase over a new baseline in the 1<sup>st</sup> year of the biennium and a 2 percent increase over the new baseline in the 2<sup>nd</sup> year of the biennium.

The committee reviewed school districts continuing to receive transition minimum payments. During the 2018-19 school year, 86 school districts received a transition minimum adjustment, of which 22 school districts received the total dollar baseline minimum. For the 2019-20 school year, 101 of the 173 school districts operating in the state received a transition minimum adjustment, of which 49 school districts received the total dollar baseline minimum. The number of school districts receiving a transition minimum adjustment is anticipated to decrease from 101 school districts during the 2019-20 school year to 90 school districts during the 2020-21 school year. Recent increases in the integrated formula payment rate may bring some school districts onto the formula or some school districts may gain enough students to move from the total dollar minimum baseline to the formula.

In 2019, the Legislative Assembly approved a plan to bring all transition minimum school districts onto the formula over the next 7 years. Provisions were made to begin phasing out the dollar amount transition minimum by reducing the adjustment by 15 percent each year beginning in the 2021-22 school year. Formula changes also will reduce the amount by which the district's baseline funding per weighted student unit exceeds the payment provided per weighted student unit by 15 percent each year beginning in the 2021-22 school year. Weighted student units over the baseline weighted student units will be reimbursed at the formula payment rate, instead of the baseline funding per weighted student unit rate. It is anticipated the transition minimum adjustment, costing \$49.5 million during the 2019-20 school year, will be eliminated in the 7<sup>th</sup> year.

The committee recognized smaller school districts do not benefit from the economies of scale of larger school districts and school districts in certain sparsely populated areas of the state are considered essential to avoid unreasonable travel times for students. The committee reviewed information regarding viable school districts and small, but necessary isolated school districts. The state has two definitions for isolated school districts. School districts with a land mass greater than 275 square miles and fewer than 100 students receive an additional weighting factor of .1 for each student. School districts with a land mass greater than 600 square miles and fewer than 50 students receive an additional weighting factor of 1.10. There are 16 districts that qualify for the .1 weighting factor for districts greater than 275 square miles with fewer than 100 students and no districts with over 600 square miles and fewer than 50 students. The National Center for Education Statistics defines remote rural as rural territory more than 25 miles from an urbanized area.

The committee studied various methods of providing additional assistance to school districts anticipating significant state aid formula reductions when transition minimum adjustments are phased out, including a three-tiered sparsity funding system used by South Dakota and potential changes to the school size weighting factors.

The committee received information regarding the effects of adopting a three-tiered funding system in the state school aid formula. The South Dakota sparsity formula provides additional funding for smaller school districts. Criteria for payment includes enrollment, enrollment per square mile, land area, and distance to the nearest high school. To be eligible for payment under the South Dakota model, school districts also must offer grades through high school and levy the maximum property tax. The sparsity formula separates school districts into three categories--enrollment under

83 students, enrollment from 83 to 232 students, and enrollment over 232 students but fewer than 500 students. The committee was informed the formula seemed to generate more funding for school districts with enrollment ranging from 83 to 232 students and smaller payments to districts with fewer than 83 students and more than 232 students. Districts qualifying for sparsity formula funding receive 75 percent of the general state aid per student up to a maximum payment of \$110,000. Because the per student payment is higher in North Dakota than it is in South Dakota, many of the North Dakota districts would reach the maximum payment when applying the same sparsity formula to North Dakota schools.

The committee received information showing under the previous state school aid formula, payment rates were lower and the formula weighting factors had less impact. Whether weighting factors accurately reflect the cost of services was not addressed when the current formula was adopted. Under the current formula school districts' ability to levy property tax is limited and school districts are not able to rely on property tax to supplement state school aid as in the past. Because smaller school districts are less efficient, the school size weighting factor has become more important under the new formula. A substantial number of school districts continue to receive transition minimum adjustments indicating weighting factors may not accurately reflect the cost of educating certain students.

The committee reviewed the number of years it would take school districts receiving transition minimum adjustments to move to the formula. Given no change in enrollment and 2 percent annual increases in the per student payment, it is estimated 42 school districts could transition to the formula within 10 years. The remaining 36 school districts would require between 11 and 42 years to transition to the formula. If annual per student payment rate increases are more than 2 percent, school districts will move onto the formula faster and if the per student payment rate increases are less than 2 percent, school districts will move onto the formula slower.

The committee reviewed an analysis, prepared by DPI, of adjustments to the school size weighting factors for each school district, which would be required to eliminate the transition minimum adjustment and move the district to the formula. The analysis resulted in a wide range of school size weighting factors needed to eliminate the transition minimum adjustment in each school district. After removing outlier districts, the committee reviewed the impact of various sets of new school size weighting factors that could be applied to all school districts. The new school size weighting factors would eliminate or significantly reduce the transition minimum adjustment for most school districts. The new school size weighting factors included in the analyses would increase the state's cost of state school aid. Although the factors would not increase funding for districts with a transition minimum, school districts on the formula would receive additional funding due to increases included in the proposed new sets of school size weighting factors. Even if the transition minimum adjustments for some districts were not eliminated, the adjustments could be reduced with a new set of school size weighting factors. Increasing the school size weighting factors would mitigate some of the negative impact of the phase-out of the transition minimum adjustment scheduled to begin in the 2021-22 school year. The committee was informed some districts are close to being on the formula and the weighting factor adjustment is slight. However, other districts would require a significant increase in the size weighting factor to generate the same funding as the transition minimum adjustment.

The committee analyzed the cost of the various weighting factor scales based on data from the 2019-20 school year, which is based on 2018-19 enrollment. The data was used to analyze the phase-in of proposed sets of school size weighting factors over the same 7-year period the transition minimum will be phased out. Proposed sets of school size weighting factors reviewed by the committee resulted in net savings related to the phasing out of the transition minimum adjustments. The goal of the analysis was to keep the school size weighting factor adjustments cost neutral when compared to the reduction in transition minimum adjustments which is estimated to save the state \$8 million in the 1<sup>st</sup> year the adjustments are reduced. Reorganized districts benefit from a special factor for 4 years to prevent the school district from losing funding through reorganization or by entering a cooperative agreement. These special factors will require consideration when adjusting the school size weighting factors.

### **Transition Maximum Adjustments**

Transition maximum adjustments apply to those districts that were below the per student payment rate in the 2012-13 base year when the formula was implemented. Prior to the 2019-20 school year, every school district received a baseline funding calculation that included a baseline for total dollars received, a weighted student unit baseline, and a per student payment baseline that were established using 2012-13 school year finance and student data. If a school district had a baseline per student payment rate less than the statutory per student payment rate for the 2013-14 school year, the school district received a transition maximum adjustment to its formula calculation to prevent significant changes in school district budgets due to the implementation of the funding formula change. In 2019, the Legislative Assembly reset school district baseline funding to the 2018-19 school year. However, the legislation did not provide for a phase-out of transition maximum adjustments. For these districts, transition maximum payments were increased 10 percent each year of the 2013-15 and 2015-17 bienniums to 140 percent of the district's baseline funding per weighted student unit multiplied by the district's prior year weighted student units. There was no increase in the transition maximum adjustment during the 2017-19 biennium, and in 2019 the Legislative Assembly increased transition maximum payments by 5 percent in 2019-20 and 5 percent in 2020-21. During the 2019-20 school year, 11 school districts, mostly Native

American schools impacted by federal funds, received a transition maximum adjustment resulting in a reduction to the formula of \$10.5 million compared to the 2013-14 school year when 41 school districts received a transition maximum adjustment totaling \$19.5 million. As increases in the transition maximum adjustment have been approved, school districts have moved onto the formula.

The committee reviewed various methods of phasing out transition maximum adjustments and the cost of bringing all transition maximum school districts onto the formula. Given increases in the transition maximum payments, the length of time to get all school districts onto the formula will vary. If transition maximum school districts were given a percentage increase each year, a few school districts would take significantly longer to transition than the others. One school district, which accounts for more than one-half of the estimated 2020-21 transition maximum adjustment total of \$9.8 million, will take significantly longer to transition to the formula. The length of time to transition these districts also is dependent on the gap between the percentage increase in the transition maximum payment and the percentage increase in the per student payment rate. If the 5 percent annual increase in the transition maximum payment is continued into the 2021-23 biennium, the cost to the state would be approximately \$5.4 million. If transition maximum districts received increases of 7 percent in the 1<sup>st</sup> year and 8 percent in the 2<sup>nd</sup> year of the 2021-23 biennium, the cost would be approximately \$7.6 million. If transition maximum districts receive 10 percent annual increases during the 2021-23 biennium, the cost would be approximately \$10.2 million. The number of districts transitioning to the formula with the proposed increases would depend on potential changes to the per student payment.

The committee was informed that to ensure all the school districts are on the formula, the deduction could be adjusted by a percent of the difference over 7 years rather than providing percentage increases each year. A hybrid method of bringing transition maximum school districts onto the formula could include allowing transition maximum school districts to receive the statutory per student rate for new students as opposed to the lower transition rate or by providing a percentage increase, but also requiring the formula gap be reduced by a certain percentage to ensure all districts are transitioned to the formula over 7 years.

### **Districts on the formula**

Districts on the formula, those not subject to minimum or maximum adjustments, were given 3 percent increases each year of the 2013-15 and 2015-17 bienniums as the integrated formula payment was adjusted annually. There was no increase in the integrated formula payment rate during the 2017-19 biennium. The per student payment was increased by 2 percent each year of the 2019-21 biennium, to provide \$9,839 per weighted student unit in the 2019-20 school year and \$10,036 per weighted student unit in the 2020-21 school year.

The total formula amount, adjusted for school district minimum and maximum calculations, the local contribution of 60 mills, and local in lieu of revenue, is reduced further for districts with excess ending fund balances. The amount remaining after deductions is provided by the state. Total state and local funding is divided by total weighted student units to determine state and local funding per weighted student unit. Districts with state and local funding per weighted student unit equal to \$9,839 during the 2019-20 school year are considered on the formula and do not have adjustments for minimum or maximum payments. Districts with state and local funding per weighted student unit above \$9,839 receive transition minimum funding. Districts with state and local funding per weighted student unit below \$9,839 are subject to the transition maximum calculation. The Department of Public Instruction reported, for the 2019-20 school year, 62 of the 173 school districts receiving state school aid were on the formula.

### **Excess Ending Fund Balance Deduction**

The committee reviewed school district ending fund balance limitations. The ending fund balance of a school district is limited under Section 15.1-27-35.3 to 35 percent of its actual expenditures, plus \$50,000 (\$100,000, if the district is in a cooperative agreement for 2 years). State school aid is reduced by the amount by which a school district's ending fund balance exceeds the limit. In addition, Section 15.1-07-29 provides the amount carried over by a school district in the ending fund balance may not exceed 45 percent of the current annual budget for all purposes other than debt retirement and amounts financed from bond sources plus \$20,000. There is no consequence for exceeding the threshold in Section 15.1-07-29.

The committee was informed the ending fund balance limitation is a challenge for transition maximum districts because the districts have little property tax revenue and funding is dependent on federal revenue, the timing of which may be inconsistent. The excess ending fund balance deduction in the state school aid formula also is problematic for school districts that receive significant unpredictable revenue.

A school district may reduce an ending general fund balance by transferring funds from the general fund to the building fund; however, transfers from the building fund to the general fund are restricted. The Coronavirus (COVID-19) pandemic, which closed school buildings in March 2020 and limited school districts to online instruction, resulted in some school districts, mostly smaller districts, being at risk of accruing larger than anticipated ending fund balances as of June 30, 2020. The early spring closure of several small school districts resulted in lower than anticipated expenditures

and higher than anticipated amounts of cash on hand. In addition, ending fund balance limits are lower because the limits are based on a percentage of the lower than anticipated expenditures. The committee determined it was not prudent for school districts to spend funds unnecessarily to meet the limits set in statute when the districts may need the additional funding to address expenses related to the COVID-19 pandemic in the fall. The committee determined it would be appropriate to allow the excess ending fund balance to remain with school districts and not reduce state school aid during the 2020-21 school year.

The committee considered a bill draft to amend Section 57-15-17 to allow school districts, which transferred funding from their general fund to their building fund between March 13, 2020, and July 1, 2020, to avoid an excess fund balance deduction to their state school aid, to return the funding to their general fund, if the transfer is done before June 30, 2021. The exception would be temporary to allow school districts to keep excess funding resulting from school district closures during the COVID-19 pandemic. It is estimated 33 small school districts would benefit from the increased transfer flexibility. The committee determined school boards wanting to transfer excess funds related to the COVID-19 pandemic school facility closures, could identify those funds and the reason for the transfer in school board minutes. If a school district transfers excess funding from its general fund to the building fund before June 30, 2020, the district would not have an excess general fund balance at the end of the 2019-20 school year and would not be subject to a state school aid deduction during the 2020-21 school year. If the bill draft is not approved by the Legislative Assembly in 2021, the funding remains available to the school district in the building fund, where it will not affect the state school aid calculation. If the bill draft is approved by the Legislative Assembly, the school district would be able to return the funding to the general fund without limitation.

### **School District Mill Levy and In Lieu of Property Tax Revenue and Other Local Revenue**

The committee gathered information regarding property tax revenue, in lieu of property tax revenue, and local revenue received by each school district and deducted in the state school aid formula. During the 2018-19 school year, property tax provided 20 percent of state school aid formula payments, in lieu of revenue provided 5 percent of state school aid formula payments, and the state provided the remaining 75 percent of the state school aid formula. The committee received information indicating while state funding has accounted for almost 80 percent of the state school aid formula in the past, higher property values have increased local funding. As property values increased during the 2017-19 biennium, there were no increases to the per student payment rate, resulting in a decrease in the state's share of formula funding to approximately 75 percent. Increases in the per student payment rate, approved in 2019, could increase the state's share of the formula. Federal funding and other sources, including a miscellaneous levy and other state grants, are not considered in the formula. When these additional sources of revenue are considered, the state's contribution to K-12 funding is approximately 60 percent. The funding sources vary significantly by district and the statewide percentage of 75 percent is not accurate in districts that receive significant amounts of local revenue. Local in lieu of revenue contributions are deducted in the state school aid formula; however, are not considered when determining the 60-mill requirement. The 60-mill deduction requirement and local in lieu of revenue deductions increase the percentage of local contribution in the state school aid formula.

The committee received a report regarding the general fund levy and value of one-mill levy in each school district in 2018 and the total 2018 taxable valuation, including taxable valuation per student. The value of one mill is equal to the taxable valuation of the school district multiplied by .001. In 2018, the value of one mill varied from just over \$3 at the Grand Forks Air Force Base to \$481,058 in Bismarck, the statewide average value of a mill levy was \$26,700, and the median value is \$11,500. The range of revenue generated by one-mill levy in school districts across the state poses funding challenges. According to the report, because mill levies raise more funding in property rich districts, those districts may be able to raise funding for school construction at a lower mill rate than property poor districts.

Annual increases in property tax are limited to 12 percent of prior tax or the amount of new growth, whichever is greater. Although new property qualifying as tax exempt is included in the new growth of the county in the year it is put into service, other taxable properties are paying the amounts related to the tax exempt property until it is taxed. The committee reviewed the maximum levy worksheet for taxable year 2019 for school districts' general fund, including example worksheets and worksheet instructions. Calculation 1 on the worksheet determines if the prior year assessment plus 12 percent, or 70 mills applied to the current taxable valuation, yields the higher maximum mill levy. Calculation 2 on the worksheet determines the new property value. Even with large commercial properties added to the tax base, the 12 percent increase calculation typically provides for the larger allowable increase. As a result, calculation 1 on the maximum levy worksheet is applied most commonly, and calculation 2 is rarely used even in the western part of the state where there has been rapid growth. New property additions would have to be substantial for the tax increase related to the new property to exceed the 12 percent increase limitation. The committee was informed there was discussion before the 2019 legislative session regarding whether new property should be added to the 12 percent increase when determining the property tax increase limitation. Counties have been collecting data on new property, and if approved by the Legislative Assembly, the Tax Department could build the necessary changes into the maximum mill levy worksheet to apply the 12 percent increase limitation only to existing property. If school districts are allowed to exclude



new property when determining the 12 percent limit on property tax increases, the same exclusion will need to be provided when calculating the local property tax deduction in the state school aid formula.

An adjustment certified by DPI has been added to the 2019 worksheet to account for the phase-in of the 60-mill deduction from the state school aid formula. This adjustment is necessary for districts unable to levy 60 mills because of the 12 percent limitation on annual increases in both taxation and the state school aid formula deduction. If a school district is not on the formula because it does not levy 60 mills, state funding is provided to meet the total funding determined by the formula. The 2019 Legislative Assembly approved a provision to phase in the 60-mill deduction for all districts starting in the 2020-21 school year. The property tax deduction for districts deducting fewer than 60 mills will be increased by 10 percent of the difference in the first 2 years of the phase-in period and 20 percent of the difference in each of the remaining 4 years of the phase-in period. The committee received information regarding the 60-mill local property tax contribution included in the state school aid formula and the fiscal impact of changes to the 60-mill contribution for districts with a deduction below 60 mills. The analysis includes districts deducting fewer than 60 mills during the 2019-20 school year and includes the estimated property tax deduction each year of the phase-in period. Based on 2019-20 property valuations, the cumulative increase in the deduction for all districts currently deducting fewer than 60 mills would be a savings to the state of an estimated \$22.5 million. The difference between current deductions for local property tax and deductions at 60 mills could be higher as property values increase in future years resulting in additional savings to the state. The volatility of property values will make it difficult to budget for the 60-mill local property tax deduction in the formula.

The committee also reviewed the impact of the minimum local effort on state aid which requires if a school district's taxable valuation per student is less than 20 percent of the state average valuation per student, the Superintendent of Public Instruction, for purposes of determining state aid, must deduct an amount equal to 60 mills times 20 percent of the state average valuation per student multiplied by the number of weighted student units in the district. The committee received testimony that the minimum local effort deduction may result in further reductions in state school aid for certain school districts deducting the transition maximum adjustment. Because the local effort is based on the state average taxable valuation, 60 mills is deducted in the formula even though the "property poor" district does not collect the additional property tax funding. The 12 percent limit on increases in the deduction also applies when the taxable valuation is imputed.

### **Status of State School Aid - 2019-21 Biennium**

The committee received reports from DPI regarding student enrollment and the status of funding for state school aid for the 2019-21 biennium.

In 2019, DPI estimated integrated formula payments during the 2019-21 biennium based on 2019-20 school year average daily membership (ADM) of 112,630 students and 2020-21 school year ADM of 116,634 students. The department estimated state school aid integrated formula payments will total \$2,714,393,010 during the 2019-21 biennium, of which \$537,999,973 was estimated to be provided through local property tax contributions, \$100,049,326 was estimated to be provided through local in lieu of taxes and revenue contributions, and \$2,076,343,711 was estimated to be provided by the state. In addition to the state's share of state school aid integrated formula payments, the appropriation for 2019-21 biennium integrated formula payments included funding for costs related to child placement, regional education association grants, the gifted and talented program, estimated cross-border tuition payments to South Dakota, and budget variances. The department estimated these expenditures and budget variances would total \$21,858,718, for a total of \$2,098,202,429 charged to the integrated payment line item for the 2019-21 biennium. Based on total integrated formula payments, the state's share of funding for state school aid was expected to shift from 54 percent in 2009 to 77 percent during the 2019-20 school year.

The committee received updated 2019-21 integrated formula payment estimates from DPI. The Department of Public Instruction estimates state school aid for the 2019-20 school year, based on 2019-20 school year ADM of 112,165 students, will total \$1.314 billion, of which \$263.9 million, or 20 percent, is provided by local property tax, \$58.3 million, or 4.4 percent, is provided by local in lieu of revenue, and \$991.6 million, or 75.2 percent, is provided by the state through integrated formula payments. Because state school aid is paid based on the prior year enrollment, DPI estimates for the 2020-21 school year are based on 2019 fall enrollment. State school aid for the 2020-21 school year, based on 2020-21 school year ADM of 114,788 students is estimated to total \$1.387 billion; of which \$279.6 million, or 20.2 percent, is estimated to be provided by local property tax; \$55 million, or 4 percent, is estimated to be provided by local in lieu of revenue; and \$1,052.3 million, or 75.8 percent, is estimated to be provided by the state through integrated formula payments. The local property tax contribution to 2020-21 state school aid is known because it is based on 2019 property values; however, the contribution from in lieu of revenue will not be known until August or September 2020. Lower than anticipated enrollment, increased contributions from in lieu of property taxes, and a large ending fund balance deduction resulted in budget savings of \$19.5 million during the 2019-20 school year and based on preliminary estimates, state school aid payments for the 2<sup>nd</sup> year of the biennium are anticipated to be \$13.3 million less than budgeted.

## Projected State School Aid - 2021-23 Biennium

### Cost to Continue

The committee reviewed a preliminary estimate of funding required to continue current state school aid integrated formula payments during the 2021-23 biennium. The report, prepared by DPI, was based on:

- ADM projected using a 5-year cohort survival routine with 2019-20 fall enrollment as the base year;
- Taxable valuation for fiscal year 2020-21 based on taxable year 2019 and taxable valuations for 2021-22 and 2022-23 projected based on a 2-year average increase with a maximum increase of 8 percent and a minimum increase of 0 percent;
- The implementation of delayed formula changes approved in 2019, including on-time funding, the phase in of the 60-mill deduction and the phase out of transition minimum adjustments; and
- Other statistical data and weighting factors based on data supporting the 2019-20 payment year.

The Department of Public Instruction is projecting a 2.2 percent increase in ADM each year of the 2021-23 biennium and estimates the cost-to-continue integrated formula payments for an estimated 10,151 additional students will total \$131.3 million. The cost of enrollment increases is partially offset by savings related to reductions in transition minimum adjustments (\$20.9 million) and savings related to adjustments to school districts' property tax contribution to bring all school districts to a 60-mill contribution (\$12.7 million). Projections do not include the impact of COVID-19 in March 2020. Of this increase, an estimated \$85.8 million will be provided locally through estimated increases in property tax contributions and in lieu of property tax revenue. The remaining \$45.5 million of estimated cost-to-continue integrated formula payments will be provided by the state. Funding available from the common schools trust fund is estimated to increase by \$52 million and may offset the funding required to continue state aid.

### Committee Recommendation

The committee recommends [House Bill No. 1028](#) to allow a school district to temporarily transfer excess funds, accruing as a result of the COVID-19 pandemic, between the general fund and the building fund of the school district.

## ELEMENTARY AND SECONDARY EDUCATION TRANSPORTATION STUDY

Senate Bill No. 2013 directed a study of school transportation, including district routes, expenditures, reimbursements, and possible efficiencies.

### Background

The 1957 Legislative Assembly approved a provision for transportation reimbursement that ranged from 25 cents per day for students living at least two miles from school to 80 cents per day for students living at least six miles from school and provided an additional 10 cents per day for each one-half mile over six miles. In the 1980s state transportation aid was paid to school districts according to the number of miles traveled, the size of schoolbuses being operated, and the number of students transported. State transportation aid steadily increased as a percentage of all transportation costs incurred by school districts. By the 1985-86 school year, state transportation aid payments totaled \$20,189,000 or 88.6 percent of all school district transportation expenditures. There was a disparity in the percentage of transportation costs reimbursed to school districts. In general, rural school districts with fewer students and longer routes received the highest ratio of state aid to actual costs. Many such districts received state aid in excess of 100 percent of their actual costs. The largest school districts with large student populations and relatively short bus routes received the lowest ratio of state aid to actual transportation costs. These districts typically received state aid in amounts varying between 40 and 75 percent of their transportation costs.

An issue that surfaced during the 1985 legislative session concerned certain school districts that charged for the transportation of rural school children. State law did not require school districts, other than those that have been reorganized, to provide transportation to schools. Therefore, in school districts that had not been reorganized, certain costs of school transportation were charged to the parents of children who were being bused to school. This practice was challenged by a Bismarck Public School District patron in *Bismarck Public Schools v. David Walker*, 370 N.W.2d 565 (N.D. 1986). In that case, the North Dakota Supreme Court refused to determine whether there is a state constitutional right to free transportation to schools because it found the Bismarck Public School District patrons had signed a contract agreeing to pay transportation costs and thereby waived any rights to receive that transportation free of charge. This practice was challenged by a Dickinson Public School District patron in *Kadrmas v. Dickinson Public Schools*, 402 N.W.2d 897 (N.D. 1987). The assertion was that Section 15-34.2-06.1, which allowed nonreorganized school districts to charge for transportation, violated the North Dakota constitutional provision providing for a uniform system of free public schools. The North Dakota Supreme Court held the constitutional provision mandating a uniform system of free public schools does not require the state or school districts to provide free transportation for students to and from school. On appeal, the United States Supreme Court affirmed the constitutionality of the statute.

The transportation formula continued to be criticized because there was a wide disparity in the percentage of transportation costs reimbursed to school districts. The range in cost per mile was due to various factors. For example, some school districts held costs down by hiring mechanics, buying used buses and used or rebuilt parts, paying immediate attention to maintenance, paying drivers to use their own cars, and planning and limiting routes. Other variables that affect the cost of transportation from district to district included types of roads, replacement schedules for buses, and salaries of bus drivers. In addition, some school districts receiving over 100 percent of their transportation costs were not factoring in administrative costs or depreciation as part of their transportation costs.

The Legislative Assembly approved House Bill No. 1003 (1993), the appropriations bill for the Superintendent of Public Instruction. This bill became the principal 1993 education funding enactment and capped state transportation payments at 100 percent of transportation costs for the 1<sup>st</sup> year of the 1993-95 biennium and at 90 percent for the 2<sup>nd</sup> year of the biennium. The bill provided any savings resulting from imposition of the 90 percent cap during the 2<sup>nd</sup> year of the biennium be used by the Superintendent to increase the per student transportation payments. The Legislative Assembly, in Section 9 of the bill, provided \$100,000 from the general fund and \$60,000 from other funds to DPI for the purpose of studying school transportation services during the 1993-95 biennium. The department was to develop, by December 1, 1994, a school transportation system database that included the network of usable roads, school district boundaries, and the location of all schools and related facilities. The department was to negotiate with North Dakota State University to utilize any available information the university had regarding the study.

The 1995-96 interim Education Finance Committee found that while transportation payments were limited to 90 percent of a district's current transportation operating cost, plus the 8-year average cost of transportation equipment, districts affected by the cap complained that reported transportation costs were not uniform among the districts. Superintendents from smaller districts said they spent considerable time on busing--time not reflected in the cost calculations. Other districts charged costs to other users of transportation services on an ability-to-pay basis. For example, an extracurricular program not having a budget for transportation may be subsidized by the regular transportation program in one district and not reported in another. Recognizing these inconsistencies, the 1995 Legislative Assembly directed the Superintendent of Public Instruction to develop and require school districts to use a uniform cost accounting system for the transportation reimbursement program. The document, *Guidelines for Student Transportation Costs*, was issued in April 1996, and addressed contracted services, bus drivers, fuel, family transportation, repairs, maintenance, insurance, equipment costs, and the allocation of costs related to the district superintendent, business office, and school board.

In 2001, the Legislative Assembly moved Century Code sections related to K-12 education, including the transportation funding formula, from Title 15 to Title 15.1 during a rewrite of K-12 education provisions. These changes were not effective until after June 30, 2001. As a result, the formula for transportation grant distribution as of June 30, 2001, would be state statute as it existed after the 1999 session. Provisions, existing in 1999, regarding transportation aid included sections related to definitions, transportation aid calculations, transportation aid for vocational education and special education, certification of information by the school district business managers, determination and payment of transportation aid, including a 90 percent limitation, and distribution of transportation payments in the event of school district closure.

The 2001-02 interim Education Committee was informed data envelopment analysis, which involves an analysis of comparable operating units, could provide an alternate method for measuring and encouraging efficiency, as well as provide a basis for funding transportation. All school districts in the state would be divided into categories or peer groups. Once the categories or groups are established, the next step would be to standardize the factors. School district transportation factors may include costs for administrators, drivers, mechanics, repairs, and fuel. Through use of a mathematical formula, variables would be analyzed to determine the relative efficiency of each district. Each district is compared to the other districts in its category or group. If funding is made a part of the formula, the funding is then based on the operational cost of the most efficient district in the category. In addition to providing a basis for funding, it also is able to assist school districts in reconfiguring transportation routes so that the greatest possible degree of efficiency may be attained. A data envelopment analysis project had been in a stage of partial completion for a number of years. An initial appropriation of \$50,000 was made for the project during the 1997 legislative session, but not supplemented in 1999 or 2001.

The 2003 Legislative Assembly repealed Century Code sections related to payments for school district transportation of students, payments for school district transportation of special education students, payments for school district transportation of vocational and technical education students, certification of information for transportation payments, distribution of transportation payments in the school closure, and state transportation payments to school districts. The Legislative Assembly, in Section 31 of Senate Bill No. 2421 (2003), provided DPI distribute transportation aid to each school district in the state in an amount equal to the transportation aid payments received by the school district during the 2001-03 biennium. In addition, the Legislative Assembly approved Senate Bill No. 2032 (2003) to appropriate \$50,000 to the Superintendent of Public Instruction for the completion of the data envelopment analysis project.

The 2003-04 interim Education Committee once again reviewed data envelopment analysis as an alternate method for measuring and encouraging efficiency, as well as providing a basis for funding. The interim committee recommended House Bill No. 1033 (2005) to require the Superintendent of Public Instruction to use data envelopment analysis as the basis for calculating school district transportation payments; however, the bill was not approved by the Legislative Assembly. Instead, the Legislative Assembly, in Section 25 of House Bill No. 1154 (2005), required that for the 1<sup>st</sup> year of the 2005-07 biennium, DPI apply the transportation formula as it existed on June 30, 2001, except provide reimbursement for in city mileage at the rate of 50 cents for schoolbuses having a capacity of 10 or more students and reimbursement for vehicles having a capacity of 9 or fewer students and transporting students who live outside the incorporated limits of a city at the rate of 40 cents per mile. The Superintendent was to use the latest available student counts in determining transportation payments. During the 2<sup>nd</sup> year of the biennium, the Superintendent was to distribute the same amount to each school district as the district received during the 1<sup>st</sup> year of the biennium.

The 2007 Legislative Assembly continued to provide funding based on the state transportation formula, as it existed on June 30, 2001, during the 1<sup>st</sup> year of the biennium and to provide funding for the 2<sup>nd</sup> year of the biennium be distributed to each school district in the same amount the district received for the 1<sup>st</sup> year of the biennium. Reimbursement rates, in Section 48 of Senate Bill No. 2200 (2007), were adjusted to provide 51.5 cents per mile for schoolbuses having a capacity of 10 or more passengers and transporting students within city limits and 40 cents per mile for vehicles having a capacity of 9 or fewer passengers and transporting students in rural areas. A rate of 73.5 cents per mile for schoolbuses having a capacity of 10 or more passengers and transporting students in rural areas was added during the 2007-09 biennium.

The 2009 Legislative Assembly provided \$43.5 million from the general fund for transportation aid, \$10 million more than the 2007-09 biennium. Section 54 of House Bill No. 1400 (2009) provided DPI was to distribute transportation aid for the 2009-11 biennium based on the state transportation formula as it existed on June 30, 2001, except DPI was to provide reimbursement at the rate of 92 cents per mile for schoolbuses having a capacity of 10 or more passengers and 44 cents per mile for vehicles having a capacity of 9 or fewer passengers. The 2009 Legislative Assembly also adjusted the formula to resume funding based on the number of students transported. A reimbursement of 24 cents per student for each one-way trip was added to the transportation aid formula. Beginning with the 2009-11 biennium, there is no longer a distinction between transporting students in rural areas and transporting students within city limits and funding during the 2<sup>nd</sup> year of the biennium is distributed based on the formula, instead of funding provided during the 1<sup>st</sup> year of the biennium.

The 2011 Legislative Assembly provided \$48.5 million from the general fund for transportation aid. This level of funding was the same as the 2009-11 biennium, which included a contingent \$5 million appropriation from the general fund for supplemental transportation aid payments. The appropriation was contingent on the Office of Management and Budget projecting during the 2009-11 biennium that the June 30, 2011, ending balance of the state general fund will be at least \$30 million more than estimated by the 2009 Legislative Assembly. The February 2011 executive revenue forecast estimated the conditions would be met and the contingent supplemental transportation aid payments would be made. Reimbursement for two types of family transportation were added in 2011 and Section 36 of Senate Bill No. 2150 (2011) required DPI to distribute transportation aid for the 2011-13 biennium based on the state transportation formula as it existed on June 30, 2001, except DPI is to provide reimbursement at the rate of \$1.03 per mile for schoolbuses having a capacity of 10 or more passengers; 46 cents per mile for vehicles having a capacity of 9 or fewer passengers; 46 cents per mile round trip for family transportation of a student with a disability whose individualized education program plan requires that the student attend a school outside the student's school district of residence; 46 cents per mile one way for family transportation if the student lives more than two miles from the public school the student attends; and 26 cents per student for each one-way trip.

Except for reimbursement rate increases, the transportation formula continued, based on the state transportation formula as it existed on June 30, 2001, for the 2013-15 and 2015-17 bienniums. The formula, still based on the state transportation formula as it existed on June 30, 2001, continued during the 2017-19 biennium; however, reimbursement rates and funding were reduced.

The 2019 Legislative Assembly reviewed funding for transportation aid. In testimony provided to the Legislative Assembly, DPI reported statewide, transportation aid provides approximately 50 percent of the cost of transportation to school districts. Members of the House Appropriations Committee expressed concern regarding the formula and multiple reimbursement for the same miles on certain routes when districts cross paths and family transportation is reimbursed. Concern also was expressed regarding the transportation formula subsidizing districts transporting students from other districts and the inability to verify routes and reimbursement. The Legislative Assembly provided \$56.5 million from the general fund for transportation aid during the 2019-21 biennium. This level of funding is \$1.1 million more than 2017-19 biennium funding of \$55.4 million from the general fund and will allow reimbursement rates to remain the same as the 2017-19 biennium. Section 10 of Senate Bill No. 2013 (2019) requires DPI to distribute transportation aid for the 2019-21 biennium based on the state transportation formula as it existed on June 30, 2001, except DPI is to provide reimbursement at the rate of \$1.11 per mile for schoolbuses having a capacity of 10 or more passengers; 52 cents per

mile for vehicles having a capacity of 9 or fewer passengers; 50 cents per mile round trip for family transportation of a student with a disability whose individualized education program plan requires that the student attend a school outside the student's school district of residence; 50 cents per mile one way for family transportation if the student lives more than two miles from the public school the student attends; and 30 cents per student for each one-way trip.

### **Transportation Demand**

The committee reviewed a summary, based on information published by DPI, of transportation data from the 1992-93 school year through the 2017-18 school year, including number of students, transportation cost, change in annual cost, state payments, percent of state support, cost per student, cost per mile, total annual mileage, fall enrollment, number of operating school districts, and percent of all state support. The number of students transported ranged from a high of 49,117 students during the 1998-99 school year to a low of 37,257 students during the 2004-05 school year. During the 2017-18 school year, 43,613 students were transported. From the 1992-93 school year through the 2017-18 school year, the number of students transported decreased by 1 percent. In addition to a reduction in the number of routes, there was a 10 percent reduction in annual miles traveled during the same time period and the number of school districts declined from 257 to 178. The local cost of transportation increased to \$65.7 million during the 2017-18 school year. A shortage of qualified bus drivers has forced both school districts and contractors to increase wages and benefits. During the 2017-18 school year, the average transportation cost per student was \$1,507 and the average cost per mile was \$2.95 per mile. During the 2017-18 school year, state payments to school districts for transportation totaled \$26.8 million, or 40.8 percent of the cost of transportation. While the percentage of state support for all programs, including per student payments, transportation, career and technical education, special education and others, has increased, the percentage of state support for transportation has been decreasing.

The committee received information regarding transportation challenges, including the cost of buses and bus repair, bus driver shortages, wages and benefits increases, fluctuating fuel prices, and recent changes to certification requirements.

### **Transportation Aid Distribution**

The committee was informed school districts are required to submit two transportation reports by June 30 each year. The vehicle inventory report includes information regarding license number, capacity, year manufactured, year purchased, vehicle type, ownership, and vehicle purpose--activity, regular, or standby. The routes report provides information regarding total miles, total rides, maximum ride time, primary vehicle, and route type--rural, city, or special education. Schools are reimbursed for several types of routes, including rural, in-city, family to school, family to bus, special education, vocational education, extended year, public transit, and other routes, including between schools. Elementary and K-8 districts are reimbursed for transportation to high schools outside their districts. School districts are asked to report miles for activities, but the miles are not reimbursed.

The Department of Public Instruction provides reimbursement based on the rates in Senate Bill No. 2013 (2019). Reimbursement is limited to 90 percent of general fund transportation expenditures less equipment cost, plus the 8-year average of transportation equipment expenditures and an allocated percentage of the expenses of the school board, superintendent, and business manager offices. The allocation is based on the percentage of general fund transportation expenditures to total general fund budget. Although reimbursement rates no longer distinguish between rural and in-city routes, the department collects information regarding whether the route is rural or in-city. The department does not collect data regarding open enrollment rides. Transportation for open enrollment students is not identified and is reimbursed with resident students. The department does not audit the information provided by school districts. School districts and contractors are expected to determine the number of students transported each day. Transportation grants are distributed on the same schedule as the state school aid payments. Payment for school transportation is based on data from the previous year. Transportation payments for the 2018-19 school year were based on 2017-18 rides and ranged from a low of \$6,352 paid to Earl 18 Public School to a high of \$1.2 million paid to Bismarck Public Schools. Separate payments also are made to numerous special education units for qualified transportation services. The committee reviewed guidelines available in DPI's accounting manual regarding student transportation services-related costs.

The committee received information regarding a performance audit of transportation grant reimbursement by DPI. An audit report issued by the State Auditor in September 2020 included a finding relating to lack of guidance and monitoring for school district transportation reimbursement. The department indicated that although the department does not have staff resources to perform a detailed review of each school district transportation report, the department does some comparisons to prior years and communicates with school districts to resolve questions. The Department of Public Instruction does not have the authority to reject a request for reimbursement, but there is a penalty for fraudulent reporting. The department will update guidance regarding miles and rides, review processes, and document correspondence with districts.

The committee compared transportation reimbursement in North Dakota to transportation funding provided by South Dakota. The committee received information showing South Dakota does not provide funding for student transportation, nor is there a weighting factor associated with transportation in the South Dakota general aid funding formula. South Dakota provides additional funding for districts that meet the state's definition of a sparse school district. In South Dakota, if access to bus service is not furnished by the school district to which the student is assigned, the student is entitled to a transportation or a room and board allowance which is provided by the school district. In South Dakota, families are reimbursed by school districts for distances traveled in excess of 5 miles each way. In North Dakota, travel in excess of 2 miles each way is reimbursed by the school district and may be submitted for state reimbursement. While North Dakota requires family reimbursement be made to a family member, South Dakota allows for reimbursement when families rideshare.

The committee received information regarding transportation grants provided during the 1<sup>st</sup> year of the 2019-21 biennium; the impact of the COVID-19 pandemic on transportation funding during the 2<sup>nd</sup> year of the 2019-21 biennium; and an estimate of the cost-to-continue transportation aid during the 2021-23 biennium.

During the 2019-20 school year, \$28.5 million, or 50.4 percent of the \$56.5 million appropriation for transportation grants was distributed to school districts based on miles and ridership reported by school districts for the 2018-19 school year. Beginning on March 16, 2020, due to the COVID-19 pandemic, buses were not used to transport students to and from school for the remainder of the 2019-20 school year. The Department of Public Instruction informed districts they would not be reimbursed for meal delivery costs through the state transportation grant program. Although funding from the federal Elementary and Secondary School Emergency Relief Fund could be used to offset the cost of meal delivery, it would not be reimbursed on the same basis as traditional transportation grants.

The committee was informed transportation grant payments for the 2020-21 school year will be impacted by the COVID-19 pandemic because the payments will be based on lower miles and rides reported by school districts for the 2019-20 school year. The Department of Public Instruction is reviewing transportation reports submitted for the 2019-20 school year and the impact on transportation grants during the 2020-21 school year. Preliminary information submitted through the state automated reporting system application indicates transportation grant payments will total approximately \$21.7 million for the 2020-21 school year, 24 percent less than 2019-20 school year transportation grants. Based on this estimate, approximately \$6.3 million of the transportation grant appropriation would remain unspent.

The Department of Public Instruction's preliminary estimate of the cost-to-continue transportation grant payments for the 2021-23 biennium is approximately \$57 million (2 years at \$28.5 million per year). However, reimbursement for miles and ridership during the 1<sup>st</sup> year of the 2021-23 biennium will be impacted by distance and hybrid schedules, social distancing guidance, and family safety concerns impacting transportation during the 2020-21 school year.

The committee considered whether it is appropriate to reimburse school districts for the transportation of students participating in open enrollment and tuition waiver agreements. To prohibit reimbursement for these students, the committee determined legislation would be needed to establish the transportation formula which does not currently exist in statute.

The committee considered a bill draft to codify student transportation aid payment sections as the provisions existed on June 30, 2001, update provisions to reflect current practices and reimbursement rates included in Section 10 of Senate Bill No. 2013 (2019), and prohibit school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements. If the bill draft is approved by the Legislative Assembly, future changes to transportation reimbursement rates would require an amendment to the Century Code.

### **Committee Recommendation**

The committee recommends [House Bill No. 1027](#) to codify student transportation aid payment sections as the provisions existed on June 30, 2001, update provisions to reflect current practices and reimbursement rates, and prohibit school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements.

### **OTHER COMMITTEE RESPONSIBILITIES**

The committee received, pursuant to Section 15.1-02-09, a report from the Superintendent of Public Instruction regarding the financial condition of schools. The annual report is published in February for the preceding school year and includes information regarding mill levy rates, taxable valuation, revenues, expenditures, student enrollment, ADM, average cost per student, teachers, average salaries, and number of graduates.

The committee received, pursuant to Section 15.1-02-13, a report from the Superintendent of Public Instruction regarding school district employee compensation. The report is based on data reported by school districts for school years ending in June of 2017, 2018, and 2019. The report includes teachers, administrators, and other district

employees, but does not include part-time teachers. The department collects compensation information for all school districts; however, for comparison purposes the report only includes full-time licensed school district employees who have worked more than 172 days. Although the department collects the information, districts that have transitioned to 4-day weeks are not included in the report. As more districts transition from days to hours, the department will evaluate how the data for those districts can be reported. Administrators include principals, superintendents, directors, assistant principals, assistant or deputy superintendents, and assistant directors. The average base salary for administrators increased from \$96,372 to \$99,337, or 3.07 percent, from 2017 to 2019. Teachers include coordinators, library media specialists, student personnel, school counselors, school psychologists, speech and language pathologists, supervisors, instructional programmers, special education consultants, and tutors in training. The average base salary for teachers increased 1.68 percent, from \$53,261 to \$54,154, over the same period. The number of administrators statewide increased from 625 in 2017 to 643 in 2019, while the number of teachers increased from 8,936 to 9,176 during the same period.

### **OTHER REPORTS AND INFORMATION RECEIVED BY THE COMMITTEE**

In addition to the committee's other responsibilities, the committee received other reports, including reports from:

- DPI regarding special education contract costs and challenges of the special education contract system and student placement including challenges related to determining financial responsibility, unaccompanied refugee minors, calculating the actual cost of education per student, timely notification of placements and contracts by agencies still using paper forms, and residency determination, including the definition of custodial parent and legal guardian;
- North Dakota Council of Educational Leaders regarding K-12 tuition calculations, open enrollment, tuition agreements, agency-placed students, graded elementary and rural districts, air base tuition, and the Wyoming model for students educated outside their resident district;
- DPI regarding a federal Every Student Succeeds Act report on per student expenditures by school district, including cost information by building, available on the department's website;
- DPI regarding the impact of funding made available to school districts through the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and distributed on a reimbursement basis;
- Superintendent of Public Instruction regarding a study, assigned to DPI, the Indian Affairs Commission, and the Kindergarten Through Grade Twelve Education Coordination Council pursuant to Section 24 of Senate Bill No. 2265 (2019), regarding the effect of impact aid on the funding formula of reservation schools;
- North Dakota Center for Distance Education regarding the impact of the COVID-19 pandemic on enrollments;
- Department of Career and Technical Education regarding the impact of the COVID-19 pandemic on enrollments;
- DPI regarding the impact of on-time funding factors on the state school aid formula; and
- DPI regarding the impact of distance learning on school districts' ability to fulfill school calendar hour requirements and the impact of distance learning on school districts' state school aid calculation.

# EDUCATION POLICY COMMITTEE

The Education Policy Committee was assigned four studies.

- Section 21 of Senate Bill No. 2013 (2019) directed a study of dual-credit, advanced placement, and distance education courses. The study directive included a review of early enrollment placement testing and the qualifications for dual-credit and advanced placement courses. The study directive also included a review of the costs and amounts of funding necessary to provide all students access to dual-credit, advanced placement, and distance education courses, as well as the types of courses available and the delivery methods necessary to provide all students with access.
- Section 1 of Senate Bill No. 2217 (2019) directed a study of the feasibility and desirability of creating a teacher incentive for leadership program. The study directive included an evaluation of whether a program would improve student learning through improved instruction; reward effective teachers by providing increased leadership opportunities; attract new teachers to the state by offering competitive starting salaries and professional development; promote collaboration and new career pathways for teachers through mentoring, coaching, and project-based learning; and retain effective teachers through new career opportunities and advancement. The study directive also included a review of the types of data to be tracked to determine the success of the program; the correlation and effectiveness of the program in relation to other teacher development programs; and how the program operates in relation to the statewide education strategic vision.
- House Concurrent Resolution No. 3011 (2019) directed a study of provisions of the North Dakota Century Code which relate to the provision of elementary and secondary education to recommend changes to any laws found to be irrelevant, duplicative, inconsistent, or unclear.
- Senate Concurrent Resolution No. 4004 (2019) directed a study of the impact of students who experience behavioral health crisis or who engage in intense and aggressive behavior for communication purposes, both of which result in behaviors that make learning environments unsafe for other students, teachers, and other school personnel, and the need to implement a uniform reporting system.

The committee was directed to receive the following reports from the Superintendent of Public Instruction:

- A report regarding requests from a school or school district for a waiver of any rule governing the accreditation of schools.
- A report regarding waivers applications under Section 15.1-06-08.1.
- An annual report regarding the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results.
- A report regarding the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide.
- Before July 1, 2021, a report with a recommendation whether to continue the dyslexia screening pilot program beyond the 2022-23 school year.
- A report regarding updates and the collaborative report on the statewide prekindergarten through grade twelve education strategic vision.
- A report regarding proposed changes to the state accountability plan under the Every Student Succeeds Act of 2015 [Pub. L. 114-95; 114 Stat. 1177; 20 U.S.C. 28 et seq.] (Section 15.1-02-17).

The committee also was directed to receive the following reports from the Education Standards and Practices Board (ESPB):

- A report regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board.
- A report regarding the status of the alternative teacher certification program.
- A report regarding the number of teacher permits issued under an alternative teacher certification program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The report was required to include a recommendation regarding continuation of the program.

The committee also was directed to receive an annual report from the Kindergarten Through Grade Twelve Education Coordination Council regarding the activities of the council.



Committee members were Representatives David Monson (Chairman), Ron Guggisberg, Pat D. Heinert, Daniel Johnston, Donald W. Longmuir, Andrew Marschall, Mitch Ostlie, Mark Owens, Brandy Pyle, David Richter, Cynthia Schreiber-Beck, and Michelle Strinden and Senators Kyle Davison, Robert O. Fors, Richard Marcellais, Erin Oban, David S. Rust, and Donald Schaible.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## **DUAL-CREDIT, ADVANCED PLACEMENT, AND DISTANCE EDUCATION COURSES**

Section 21 of Senate Bill No. 2013 (2019) directed a study of dual-credit, advanced placement, and distance education courses. The study directive included a review of early enrollment placement testing and the qualifications for dual-credit and advanced placement courses. The study directive also included a review of the costs and amounts of funding necessary to provide all students access to dual-credit, advanced placement, and distance education courses, as well as the types of courses available and the delivery methods necessary to provide all students with access.

### **Background**

An advanced placement (AP) course is a college-level course in which a student takes an examination at the end of the school year or semester. The results of the test determine whether the high school student will receive college credit or "advanced placement." Whether a postsecondary institution chooses to award college credit to a student based on AP examination scores is up to the individual institution. The AP program was created in 1955 by the College Board, a nonprofit organization to expand access to higher education. For a high school course to be designated as an AP course, the course is audited by the College Board to determine if it satisfies the requisite curriculum and expectations.

A dual-credit course also is a college-level course taught at a high school through collaboration with a participating college but counts for both college and high school credit. A student does not need to take an examination at the end of the semester or school year to earn college credit, but generally the student must receive a certain grade level in the class, typically a "C." A high school student who desires to take a dual-credit course generally must meet and apply for admission to the participating institution under the control of the State Board of Higher Education as a dual-credit student.

Distance education courses are courses offered to students who usually are not physically present. Distance education courses usually are offered to students through correspondence or digital resources. Distance education courses may be dual-credit or AP courses.

The Center for Distance Education (CDE) primarily offers online high school and middle school distance education courses. The center also partners with Mayville State University to provide online dual-credit courses under the subject areas of general education, mathematics, and science. A student enrolled in a dual-credit course through the center may earn between 2 and 4 units of college credit, and 0.5 units of high school credit, depending on the course taken. The center provides AP online courses under the subject areas of computer education, English, science, and social studies; however, the center does not administer AP examinations. Depending on the type of course and whether the student is an in-state or out-of-state resident, the price per course ranges from \$100 to \$550. To be eligible to take dual-credit courses through the center a student must be in grade 10, 11, or 12; Have the permission of the local school administrator to enroll; have at least a 3.0 cumulative grade point average; and if the student is planning to enroll in college algebra, have an ACT Aspire subtest score of 21 or higher.

### **State Law**

"Dual-credit" and "advanced placement" are referenced in Section 15.1-21-02 regarding required high school units to be offered to students, and Section 15.1-21-02.5 regarding the North Dakota academic scholarship. "Distance education" is referenced primarily in Chapter 15-19 regarding the CDE. Additionally, the term is referenced in Section 15.1-21-02.1 regarding minimum units required for high school diplomas, Section 15.1-21-27 regarding requiring students enrolled in CDE to pass the required civics test to receive a high school diploma, and Section 15.1-23-17 allowing CDE to issue a high school diploma to a student who is homeschooled, meets the center's requirements for high school graduation, and meets other required criteria. Chapter 15.1-25 addresses postsecondary enrollment. While the chapter does not specifically address dual-credit, AP, or distance education courses, the chapter allows North Dakota high school students to complete and receive postsecondary credit.

## **Testimony and Committee Considerations**

### **North Dakota University System**

The committee received testimony and information from representatives of the North Dakota University System regarding credentialing and criteria required to become a dual-credit teacher, online masters-level courses being developed for teacher credentialing, the cost to provide dual-credit and career and technical education courses to all students in the state, how enrollments are determined, and eligibility.

According to the testimony, AP courses typically are taught in-person in the high school setting, and while formal instructor preparation for AP courses is required by the College Board, instructors do not need to meet Higher Learning Commission (HLC) requirements. Dual-credit courses may be taught in person or remotely. Dual-credit students account for approximately 10 percent of the undergraduate students in the University System. Approximately 20 percent of high school students took dual-credit courses in the 2018-19 school year. Students in the state who want to take core dual-credit courses have access through online courses offered by University System institutions and by CDE. Sixty percent of dual-credit courses are taught by high school instructors who have met the credential requirements, and 40 percent are taught by university faculty members.

The HLC accredits degree-granting, postsecondary, educational institutions in the North Central region, including North Dakota. The HLC expects accredited institutions to use credentials as the primary mechanism to ascertain minimal faculty qualifications; however, the HLC recognizes experience also may be considered in determining faculty qualifications in some situations. Common expectations for faculty credentials in higher education include completion of a program of study in the discipline in which the faculty member teaches, and for which the faculty member develops curricula, with coursework at least one level above that of the courses being taught or developed. Pursuant to 2018 survey results, the testimony indicated 21 percent of instructors currently teaching dual-credit courses in North Dakota, and an additional 28 percent of instructors plan to teach dual-credit in the future. The testimony indicated 61 percent of survey respondents do not currently meet the HLC's requirements, with an additional 9 percent of respondents indicating uncertainty as to whether they meet the requirements, and 8 percent of respondents leaving the question blank. The testimony indicated 56 percent of respondents would be interested in taking master's level, online courses through a North Dakota university, if available.

Senate Bill No. 2244 (2017), which was passed in response to the HLC's credentialing requirements, created a 4-year pilot program offering a credit-for-credit incentive to instructors teaching dual-credit courses in core subject matter areas at public and private high schools in the state, which could be used toward graduate level courses at postsecondary education institutions in the state. The bill also allowed an individual eligible for the credit coupon to transfer the coupon to a family member or student being taught by the individual if the individual has already met accreditation. The testimony indicated approximately 20 percent of the vouchers are being used by individuals who earned the vouchers to earn credits to become compliant with the HLC requirements, and the other 80 percent of the vouchers are being redesignated to others in need of the credits. The University System applied for and received an extension, through September 1, 2022, from the HLC to meet HLC instructional credentialing requirements to allow instructors to become compliant with the requirements.

Nine online master's level graduate courses are being offered in the core subject matter areas of English, communications, computer science, history, and mathematics at three institutions of higher education under the control of the State Board of Higher Education in the state. An additional 11 courses are being developed or planned to be developed in the core subject matter areas of biology, physical education/health, chemistry, physics, psychology, and sociology to help instructors meet the HLC's requirements to become dual-credit instructors. Master's level courses only may be taught by 4-year universities and research institutions. Fifteen percent of course enrollments through the University System in 2018 were delivered online, 14 percent were delivered through an asynchronous method, and 1 percent were delivered through a synchronous method.

According to the testimony, the cost of developing an online dual-credit course varies by the type of course or the technology used. The University System received Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to help faculty transition to and develop online coursework. The University System received approximately \$44.5 million in CARES Act funding, and requested \$500,000 of the available funds to help develop transitional online coursework. For the 2020-21 school year, the cost to enroll a student in a dual-credit course is \$77.56 per semester hour at the subsidized rate, and \$137.22 per semester hour at the unsubsidized rate. A "subsidized rate" means the rate is partially paid by the high school providing the instructor for the course, while an "unsubsidized rate" means the colleges and universities are covering the cost of instruction for the course. Students may receive financial assistance through the Bank of North Dakota's dual-credit assistance program if they are eligible. The cost to enroll a student in an AP course is \$85 per examination. The Department of Public Instruction (DPI) provides some assistance towards the cost of the AP examinations in certain circumstances.

To be eligible to enroll in a dual-credit course a student must be a sophomore, junior, or senior high school student in good standing, with a minimum GPA of 2.00 unless set higher by the institution, and have a recommendation from a K-12 administrator. Each high school determines the criteria for the participation of juniors and seniors to be eligible to enroll in an AP course. In the 2018-19 school year, AP courses served 43 high schools in the state, and dual-credit courses were taught in 146 high schools in the state. There were 4,603 student enrollments in AP courses, and 8,852 enrollments in dual-credit courses. Of the enrollments, 1,840 students passed the AP examination with a score of 3 or higher, and 8,586 students passed the dual-credit course. Not all students who take AP courses take the test to receive college credit. Financial assistance served 239 AP students, and 749 dual-credit students. There were 38 AP courses offered in the state, and 153 dual-credit courses. The average cost of an AP course was \$85 per test. The average cost of a dual-credit course was \$322.

## **Bank of North Dakota**

The committee received testimony and information from a representative of the Bank of North Dakota regarding the dual-credit assistance program. In 2010, the Bank of North Dakota was appointed by the governor to administer the College Access Challenge Grant program. Under the program, funds were provided by the U.S. Department of Education to foster partnerships among federal, state, and local government entities and philanthropic organizations with the intent of significantly increasing the number of underrepresented students who enter and remain in postsecondary education. The program provided grants to states to identify and design programs to meet these needs. The Bank utilized part of the grant to implement a dual-credit assistance program. Through the program, low-income students who are eligible for free or reduced-price lunch receive assistance to pay for up to two dual-credit courses per academic school year starting their sophomore year of high school. When the grant was discontinued in 2016, The Bank decided to continue the funding for dual-credit using proceeds the Bank had generated from administering the North Dakota Guaranty Student Loan Program. The Bank committed to continue funding the program for up to 5 years from 2017 through 2021. In the 2018-19 school year the program funded 749 dual-credit courses and cost \$306,791 to administer.

## **Department of Public Instruction**

The committee received testimony and information from a representative of DPI regarding dual-credit and AP opportunities. As a result of 2015 legislation relating to leveraging the senior year, the Superintendent of Public Instruction was able to partner with outside sources to provide training for teachers with mathematics, science, and English backgrounds, and to train teachers in methods for teaching AP subject areas. The goal was to get more students into the courses and to pass the AP examinations. Section 32 of Senate Bill No. 2031 (2015) allowed students to take one AP test at no cost, and up to four AP tests at no cost if the student was from a low-income household. Since the legislation passed, the number of AP examinations taken by students has risen from 2,378 AP examinations in 2016 to 4,208 AP examinations in 2018. The passing scores on AP examinations increased from 1,520 in 2016 to 2,352 in 2018. It was reported North Dakota is first in the nation in the percentage of student AP examinations passed. Testimony indicated increasing the number of master's level courses available online would help promote dual-credit in the state.

## **Other Stakeholder Testimony**

The committee received testimony and information from a representative of the Department of Career and Technical Education regarding dual-credit and advanced placement opportunities. The testimony indicated in 2018, the Department of Career and Technical Education provided over 40 dual-credit courses to more than 800 students.

According to a representative of CDE, which offers dual-credit and advanced placement opportunities, schools are requesting the center provide more dual-credit opportunities. As of October 2019, the center offers six dual-credit courses.

## **Conclusion**

The committee expressed concerns regarding the difficulty in locating and encouraging instructors to teach dual-credit and AP courses throughout the state. A major concern is locating instructors who hold the requisite credentials and qualifications to teach dual-credit courses. Committee members stated online high-level courses are needed in the state for individuals to receive the necessary credits required for dual-credit credentialing.

## **Recommendation**

The committee makes no recommendation regarding its study of dual-credit, advanced placement, and distance education courses.

# **TEACHER INCENTIVE FOR LEADERSHIP PROGRAM**

## **Background**

Senate Bill No. 2217 (2019), as introduced, would have created a new section to Chapter 15.1-07 relating to a teacher incentive for leadership in education program. The bill would have created a new program, administered by the Superintendent of Public Instruction, to provide professional development to teachers and to offer project-based incentives to teachers working on academic initiatives in their respective school districts. The program would have provided \$10 million in funding to school districts in the state. The Senate amended the bill to provide for the study. According to the legislative history, there was a need for an in-depth study of whether a teacher incentive for leadership program is needed, a long-term vision of the program, and how best to implement the program before creating the program and allocating resources. The goals of the program would be to use funding to move the strategic plan of the district forward and to incentivize great teachers to remain in the classroom. It was noted more than 50 percent of teachers in the state do not reach the 5-year mark. Testimony indicated the bill and the study were based upon work conducted by the governor's innovative education task force.

## **Relevant Legislation**

Senate Bill No. 2186 (2017) created Section 15.1-06-08.2 which provides for an innovative education pilot program under which the Superintendent of Public Instruction may accept proposals from public and nonpublic schools to

participate in an innovative education program and which requires the Superintendent to adopt rules and administer the program. Senate Bill No. 2025 (2019) required the Superintendent of Public Instruction to facilitate a process to review and update annually the statewide prekindergarten through grade twelve education strategic vision.

### **Governor's Innovative Education Task Force**

In September 2017, the governor established a 15-member innovative education task force which was intended to investigate and identify the conditions necessary to unleash the potential of teachers and students; create a system of identification and support for schools and districts implementing innovative practices; Highlight practices providing an effective and equitable 21<sup>st</sup> century education; and identify changes to state education policies that will promote the strategic adoption of student-centered learning experiences. One recommendation of the task force was the state should invest in district educational initiatives aligned with student-centric instruction, and funds should be set aside to support the initiatives and supplement the traditional education funding formula. The task force looked to programs implemented in other states, such as Iowa, which have invested in teacher leadership compensation systems. The task force determined teacher leadership compensation systems are forward-looking and designate specific leadership positions that provide educators professional development opportunities or added compensation for additional work outside standard contract language.

## **Testimony and Committee Considerations**

### **Governor's Office**

The committee received testimony and information from a representative of the governor's office regarding a potential teacher incentive for leadership in education (TILE) program. According to the testimony, a TILE program is intended to create extra duty contracts and extra compensation for educators who forward district or state educational priorities. Under a TILE program, the state designates its key priorities and allows districts to set specific objectives aligned to the strategic plan of the school district. The intent is to create opportunities for a school district to move forward strategically while providing additional leadership and career ladder opportunities for teachers without removing the teachers from the classroom and requiring the teachers to become administrators. According to the testimony, increasing educator compensation is important and should remain a priority for the state. Current funding mechanisms in North Dakota result in funding increases being overwhelmingly funneled toward operational expenses. It was asserted a TILE program could help with teacher retention and combat the teacher shortage in the state with a goal of providing incentive for individual educators to obtain leadership experience and move district objectives forward through the use of individual extra duty contracts.

### **North Dakota Teacher Support System**

The committee received testimony and information from representatives of the North Dakota Teacher Support System (NDTSS) regarding the teacher support system mentoring program, issues faced by the teacher support system, whether the teacher support system mentoring program would be compatible with a teacher incentive for leadership program, and funding.

According to the testimony, the NDTSS provides mentors for 1<sup>st</sup>-year teachers and supports instructional coaches. The program includes individual conferencing between the beginning teacher and the mentor 15 times per semester for a total of 30 hours, observations by the mentor 6 times per year, video recordings and reflections, and the ability of the beginning teacher to observe other teachers for 9 hours throughout the year. All teachers licensed in North Dakota who are in their 1<sup>st</sup> year of contracted teaching are eligible for the program. It is up to the 1<sup>st</sup>-year teacher and the teacher's administrator to determine if the 1<sup>st</sup>-year teacher will participate in the mentoring program. The program has served 2,295 beginning teachers and 158 school districts in the state. It was reported 92 percent of 1<sup>st</sup>-year teachers indicate the mentoring program positively impacted their students' learning, and 98 percent believe the program improved their teaching practices. The NDTSS mentoring program is able to accept 275 beginning teachers into the mentoring program each year. In 2019, results from an annual retention study conducted by NDTSS, which collected data over the preceding 5 years, showed teachers mentored in the NDTSS mentoring program were retained at a higher rate than teachers who were not mentored with NDTSS. Ninety-seven percent of school district administrators indicated they would like to see the program offer a 2<sup>nd</sup> year of mentoring to beginning teachers. According to the testimony, it costs approximately \$20,000 to replace a teacher when a teacher leaves a school district due to recruitment, hiring, and training expenses. If all 1<sup>st</sup>-year teachers were retained at the rate of those who were mentored in the NDTSS over the last 5 years, districts would have had the potential of saving more than \$2 million in the recruitment, hiring, and training of new teachers.

According to the testimony, the program received \$2,125,764 for the 2019-20 biennium, but the funding is insufficient to accommodate all 1<sup>st</sup>-year teachers in the state. The funding provides grants to regional education associations and school districts to supplement the work of mentoring. Due to budgetary constraints, an estimated 100 beginning teachers were not able to be enrolled into the mentoring program during the 2020-21 school year. Serving all 1<sup>st</sup>-year teachers who want to participate in the program would require funding for approximately 375 1<sup>st</sup>-year teachers each year. The majority of the program's budget is spent on stipends for mentor teachers and mentor training costs. The NDTSS would require additional funding of \$879,248 per year to provide mentoring for all 1<sup>st</sup>-year teachers, provide an optional 2<sup>nd</sup> year

program, and hire an additional staff person to help administer the program. Funding through the program is provided on a first-come, first-served basis.

The testimony indicated a TILE program would be compatible with the NDTSS mentoring program. A TILE program rewards effective teachers by providing increased leadership opportunities, while mentors in the NDTSS mentor program are chosen by district administrators and are chosen due to their professionalism and ability to teach effectively. Additionally, mentors in the NDTSS program have the opportunity to advance and become an advanced mentor by mentoring three or more 1<sup>st</sup>-year teachers and completing three professional development courses through NDTSS. An advanced mentor receives a stipend of \$900 per semester for mentoring, which aligns with a TILE program's goal of providing teachers with leadership opportunities and extra compensation pursuant to an extra duty contract. Funding to provide stipends to participants of the program comes from a passthrough grant administered by the ESPB through DPI.

### **Education Commission of the States**

The committee received information from the Education Commission of the States regarding data and comparisons of teacher leadership programs from other states. According to the information provided, teacher leadership opportunities can include both formal and informal activities, such as participating in a formal mentorship program or informally mentoring colleagues. Some states have created policies to formalize the teacher leader process in policy. As of 2013, 3 states had a master teacher designation, 8 states had some type of certification endorsements for teacher leaders, 20 states had tiers for advanced or master teachers within their multi-tiered certification systems, and 4 states had introduced teacher leader roles to assist teachers with the Common Core State Standards transition. Thirty states have a licensing system that allows teachers to advance beyond a standard professional license. In 17 states, teachers are required to demonstrate evidence of effectiveness to obtain an advanced license, 22 states offer a teacher leader license or endorsement, 17 states have adopted teacher leader standards, 13 states prescribe the role of the teacher leader in statute or regulation, 24 states provide formal supports or incentives to teacher leaders. According to the information provided, teacher leadership opportunities can offset some concerns associated with teachers leaving the profession due to dissatisfaction, lack of influence and autonomy in the school, and lack of career pathways. The committee was informed a school system's environment also does much to sustain teacher leadership programs, and school systems that value openness and teamwork and in which administrators and teacher leaders work together and communicate with staff may be more likely to have successful teacher leader initiatives.

### **Conclusions**

The committee discussed the possibility of regional education associations providing mentoring and support services for 1<sup>st</sup>-year teachers in smaller school districts having difficulty locating mentors. Several committee members indicated the demonstrated the effectiveness of recruiting and retaining teachers through the mentoring program in place through the NDTSS. It was noted the Legislative Assembly could provide more resources and funding for the mentoring program through the NDTSS instead of working on legislation to implement and fund additional teacher leadership programs, such as TILE. Several committee members voiced support for increasing the funding for the teacher mentoring program through NDTSS to provide an opportunity for all 1<sup>st</sup>-year teachers to participate in the program.

### **Recommendation**

The committee makes no recommendation regarding its study of the feasibility and desirability of creating a teacher incentive for leadership program.

## **STUDENT BEHAVIORAL HEALTH CRISIS**

Senate Concurrent Resolution No. 4004 (2019) directed a study of student behavioral health issues.

### **Background**

Senate Concurrent Resolution No. 4004, as introduced, directed a Legislative Management review of the impact of violent, disruptive, and inappropriate behavior within the educational environment perpetrated by students against other students, teachers, and other school personnel, and the need to implement a uniform reporting system. The resolution was amended to provide for a study of student behavioral health issues.

### **North Dakota Law and Relevant Legislation**

Section 50-06-01 defines "behavioral health" as the planning and implementation of preventive, consultative, diagnostic, treatment, crisis intervention, and rehabilitative services for individuals with mental, emotional, or substance use disorders, and psychiatric conditions. Pursuant to its website, the Department of Human Services (DHS) defines behavioral health further as "a state of mental/emotional being and/or choices and actions that affect wellness. Behavioral health conditions affect people from all walks of life and all age groups."

Section 15.1-07-34 requires at least 8 hours of professional development on youth behavioral health, designated from several categories, to teachers and administrators every 2 years based on the results of an annual needs assessment. This section also requires each school to designate an individual as a behavioral health resource

coordinator and requires the Superintendent of Public Instruction to maintain the contact information of each person. Section 15.1-13-35 requires candidates for teacher licensure to demonstrate competencies in youth mental health before the ESPB may issue a teaching license.

Section 50-06-43, created by Senate Bill No. 2038 (2017), provides for the task force on children's behavioral health. The purpose of the task force is to assess and guide efforts within the children's behavioral health system to ensure a full continuum of care is available in the state. Among the recommendations of the task force was to seek funding from the 2019 Legislative Assembly to provide competitive grants to school districts or schools that adopt and implement comprehensive restraint and seclusion policies and practices and provide sufficient assurances and action plans to ensure the establishment of safe and appropriate student behavior management and staff intervention policies and practices.

Senate Bill No. 2342 (2017) created a task force on the prevention of sexual abuse of children. The task force was directed to gather information concerning child sexual abuse throughout the state and develop recommendations to reduce child sexual abuse. One of the findings of the task force in its November 2018 final report was evidence-based, age-appropriate education is a benefit for children as it empowers children to discuss feelings of discomfort and assists them in identifying helpers that can interrupt and end the abuse. The task force also found teachers and parents should receive education and status notifications that enable everyone to speak a common language and monitor the health and safety of children.

House Bill No. 1237 (2019) also created a task force on the prevention of sexual abuse of children. The task force, which will sunset on September 30, 2024, was established to develop and implement a comprehensive statewide approach to the prevention of child sexual abuse, including appropriate policies, funding, staffing, resources, and programming.

### **Reporting and Resources**

Pursuant to the required behavioral health training for teachers and administrators in Section 15.1-07-34, DPI created the trauma sensitive schools training initiative. According to the DPI website, over 6,600 North Dakota educators have undergone the training. The training is intended to motivate and guide schools to examine and transform policies and practices, educational strategies, professional development, and community relationships to create an environment and community that is safe, caring, and respectful and where all children can learn to their capacity. Participants in trauma sensitive schools training learn how to understand the term child traumatic stress and know what types of experiences constitute childhood trauma; understand the impact of trauma on the brain development and behavior of children; and learn how the impact of traumatic stress can be prevented or mitigated by the use of trauma-informed responses and strategies. The United States Department of Education requires DPI to report data on truancy rates annually; the frequency, seriousness, and incidence of violence; and drug-related offenses resulting in suspensions and expulsions in all elementary, middle, and secondary schools in the state. The information is required to be reported to the state on a school-by-school basis. All public, nonpublic, and Bureau of Indian Education schools receiving federal Title I funds are required to file the report.

## **Testimony and Committee Considerations**

### **Department of Human Services**

The committee received information from a representative of the Department of Human Services regarding terminology and data related to behavioral health, and behavioral health as it relates to students. According to the testimony, behavioral health is an umbrella term that covers many different concepts and includes more than mental health. Special education, behavioral health, and trauma are used synonymously at times, but the terms are distinct and distinguishable. Behavioral health is a state of mental and emotional being, and choices and actions that affect wellness. A 2017 survey of North Dakota high school students indicated 28.9 percent of the respondents reported feeling sad or hopeless almost every day for 2 or more weeks in a row in the last 12 months to the point the student stopped doing some of his or her usual activities, 16.7 percent seriously contemplated attempting suicide within the last 12 months, 14.5 percent made a plan regarding how they would attempt suicide, and 13.5 percent attempted suicide. The testimony indicated a high percentage of foster care children entering care in 2016 and 2017 had indicated adverse childhood events, including psychological, physical, and sexual abuse; emotional and physical neglect; abandonment; domestic violence; caregiver substance abuse; caregiver mental illness or suicide; or family member incarceration.

The testimony indicated the keys to reforming the state's behavioral health system are to support the full continuum of care from promotion and prevention to treatment and recovery; increase community-based behavioral health services; and prevent criminal justice involvement for individuals with behavioral health conditions. 50 percent of all people with mental health or substance use disorders, or both, are diagnosed by age 14, and 75 percent of people with these conditions are diagnosed by age 24. Intervening during windows of opportunity when the person is young can prevent a disorder from developing. The majority of funding is spent on treatment, which is high cost and low impact. Money also must be spent on recovery so an individual can maintain wellness after undergoing treatment for a behavioral health

issue. According to the testimony, to properly integrate behavioral health and education, schools need to have systems in place to identify student behavioral health needs. Schools may use multi-tiered systems of supports to address student behavioral health needs. In a multi-tiered system of supports, tier 1 interventions target all students and are effective for 80 percent of students, tier 2 interventions involve targeted group interventions for approximately 15 percent of students, and tier 3 interventions involve intensive individual intervention for the 5 percent of students with the highest need for behavioral health support and intervention.

### **School Districts**

The committee received information from representatives of Bismarck Public Schools regarding data, initiatives, and results related to student behavioral health. According to the testimony, the barriers for students to access behavioral health services include transportation for parents, availability and access of services, and payment issues when a child is not covered by insurance. Approximately 20 percent of children have a need for some mental health services, but only one in three children receive the mental health services needed. An adverse childhood experiences study was conducted by a health maintenance organization and the Centers for Disease Control and Prevention to help school districts better understand the effect of childhood trauma on children and students. Results of a survey during the study indicated 67 percent of respondents reported at least one adverse childhood experiences on the survey, and 12 percent of respondents had at least four adverse childhood experiences. The survey also indicated a dose-response relationship, which means the higher number of adverse childhood experiences a child experiences before the age of 18, the higher prevalence of serious health issues later in life. According to testimony schools that implement early warning systems collect and rely on readily available existing data housed at the school to predict which students are at-risk, identify students not performing up to ability, examine patterns and identify school climate issues, and target resources to support off-track students. Schoolwide data is collected and used to identify which students need early intervention or supports.

The testimony indicated an interconnected systems framework takes two systems that typically operate independently and interconnects them. Bismarck Public Schools is working on interconnecting the positive behavioral interventions and supports system with the mental health system. Schools use positive behavioral interventions and supports systems by teaching children school rules, expectations, and a core curriculum for all students which teaches social/emotional learning. Interconnected systems frameworks provide evidence-based practices and research-based interventions for children through a multi-tiered system of supports. A multi-tiered system of supports framework consists of teachers, administrators, counselors, and parents looking at data to determine the needs of a child and identify interventions to put into place. Bismarck Public Schools developed two initiatives for its most at-risk students. The first initiative is the school within a school and is meant for students not yet ready to be in a general classroom with 20 other students. The second initiative is meant to provide onsite therapeutic services through a partnership with the West Central Human Service Center. Bismarck Public Schools is working to implement multi-tiered system of supports in all schools within the district. All schools in the district have the same basic framework in place, but are working on building capacity for more interventions and scaling. According to the testimony, there are issues with getting accurate, refined, and consistent data from schools and districts related to restraint and seclusion and incidents in schools.

The committee also received testimony and information from representatives of West Fargo Public Schools regarding student behavioral health. According to the testimony, half the students in West Fargo Public Schools require special education services. The continuum of services in the district includes general education with no direct special education services or supports; general education classes, direct special education services, and other related services in the general education classes; pull-out special education services and other related services for a small portion of the school in a setting other than the general education classroom; sub-separate classes with mainstreaming opportunities in academic and nonacademic classes as specified in an individualized education plans (IEP); and day/residential schools, hospital schools, and home services. Data collection in the district includes the frequency, duration, intervals of incidents, individualized behavior rating scale tools, office referrals, restraints, and room clears. West Fargo Schools use the schoolwide information system to collect data on student behavior. The data analyzes whether a physical intervention or restraint was required to de-escalate a student situation. According to the testimony, there were more than 800 minutes of instructional time lost in West Fargo Public Schools due to behavioral health room clearing incidents in each October and December of 2019, and more than 1,000 minutes lost in each September and November 2019. West Fargo Public School district averages between 40 and 50 room clears per month. Room clear and restraint data is reported to each school in the district and is discussed at meetings of elementary, middle, and high school staff. The district uses the data to investigate and determine why certain student populations have more behavioral incidents, and how best to mitigate the incidents to help both students and staff.

### **Regional Education Associations**

The committee received testimony from a representative of the regional education associations regarding trauma-informed practices in schools, social/emotional learning, and teacher professional development data related to student behavioral health. According to the testimony, the North Dakota multi-tier system of supports state advisory team is a group working through DPI on a professional development grant to build a system of support in the state specific to student academics and behavior. The testimony asserted academics and behavior are related and must be addressed

together. Teaching students to understand expectations can help mitigate and prevent a large majority of student behavioral issues. The multi-tier system of supports focuses on providing high-quality instruction and interventions matched to student needs, and monitoring progress frequently to make decisions about changes in instruction or goals. Data are used to allocate resources to improve student learning and support staff implementation of effective practices.

According to the testimony nearly 7,000 teachers in the state have undergone trauma training. School data on student behavioral health needs can be accessed through the statewide longitudinal data system. It typically takes a school 3 to 5 years to see positive results while building a behavioral health system. Trauma sensitive school training focuses on what constitutes trauma, the impact of trauma on brain development, and identifying strategies to mitigate traumatic stress. There are 219 trauma sensitive schools trainers in the state who have provided training to 169 schools and 5,641 school personnel in the state since 2016. There also is a trauma-informed practices for schools needs assessment meant to provide educators and schools with a tool to assess their progress toward creating and maintaining trauma-informed learning environments. The trauma-informed practices for schools needs assessment is intended to serve as a framework to enhance a school system's trauma-informed practices, and trauma-informed practices for schools involve promoting social-emotional learning, engaging families, implementing and maintaining restorative discipline practices, collaborating with community partners, and enhancing psychological safety through relationships. Nine school districts and 27 schools have undergone the trauma-informed practices for schools training. According to the testimony, schools are using numerous data tools to track student behavioral issues and record discipline data. The most commonly used data tracking tool is PowerSchool.

### **North Dakota University System**

The committee received testimony and information from representatives of institutions under the University System regarding how system's educational institutions address student behavioral health issues when training potential new teachers. According to the testimony, the institutions embed mental health content in courses including social-emotional learning, behavior management, and trauma-informed practices. Special education candidates are trained specifically to understand a student's behavior by identifying the reason the behavior occurs. All institutions distribute the same set of common metrics to gather data for program quality.

### **North Dakota Disabilities Advocacy Consortium and Minnesota Disability Law Center**

The committee received testimony and information from representatives of the North Dakota Disabilities Advocacy Consortium and the Minnesota Disability Law Center regarding policies and practices related to students with disabilities who experience behavioral health crisis or who engage in intense and aggressive behavior for communication purposes. There are two main principles governing special education law. The first principle is students with disabilities have a general legal right to have a free appropriate public education. The United States Supreme Court ruled IEPs for students with disabilities must be reasonably calculated to enable the child to receive educational benefits and schools have a responsibility to offer IEPs that enable the child to make educational progress in light of the child's circumstances, and every child must be provided the opportunity to meet challenging educational objectives. The second main principle is students with disabilities must be provided educational services in the least restrictive environment, which means students with disabilities must receive education to the maximum extent appropriate with students who do not have disabilities. According to testimony, the free appropriate public education and least restrictive environment principles come into context when developing a student's IEP, and development of IEPs require formal evaluations that look at the true needs of students with disabilities to determine if the student is eligible for special education services. The goal is for the school and the parents to match the needs determined in the evaluation with specific and identified services in the implemented IEP, and to give schools the necessary tools required to meet the needs of the student and the least restrictive environment required to provide necessary services.

Under the Individuals with Disabilities in Education Act of 1990, when a student exhibits violent or dangerous behavior, before implementing disciplinary procedures, the school must decide whether the behavior in question was a manifestation of the student's disability. If the behavior was a manifestation, the school is required to conduct a functional behavioral assessment and implement a behavioral intervention plan for the student. Data collected through direct observations, interviews, and record reviews help to identify the function of the dangerous behavior and guide the development of the student's behavioral intervention plan. The United States Department of Education emphasized positive behavioral strategies should be in place in schools and teachers should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports.

### **Other Stakeholder Testimony**

Testimony from a representative of Designer Genes of North Dakota emphasized the need to focus on data collection and support for all North Dakota students. Testimony indicated any student whose behavior results in the clearing of a room should be considered to have a disability and have appropriate structures and protocols in place to help.



Testimony from a representative of the North Dakota Protection and Advocacy Project addressed methods to provide training, tools, and resources required in schools and communities to support students with or at risk of developing behavioral health issues.

Testimony from a representative of the Mental Health Advocacy Network emphasized including parents of students with behavioral health issues and disabilities in the data collection process, data analysis, and how the data is reported.

Testimony from a representative of Lutheran Social Services of North Dakota noted the agency works to provide restorative practices and integrated systems frameworks in areas of the state which may not be covered by the regional education associations or the multi-tiered system of supports. The committee also received written testimony from various parents of students voicing concerns regarding the systems and supports in place for student behavioral health issues.

### **Conclusion**

The committee indicated DHS, the regional education associations, and school districts are to be commended for the efforts being made to address the behavioral health needs of students. The committee generally agreed school districts are implementing positive behavioral interventions and supports and engaging in systemic changes to their approach on student behavioral health issues. Committee members indicated some data collection used by school districts is too all-encompassing and does not contain enough detail.

### **Recommendations**

The committee makes no recommendation regarding its study of student behavioral health issues.

## **CENTURY CODE PROVISIONS THAT RELATE TO ELEMENTARY AND SECONDARY EDUCATION**

House Concurrent Resolution No. 3011 (2019) directed a study of provisions of the Century Code which relate to the provision of elementary and secondary education to recommend changes to any laws found to be irrelevant, duplicative, inconsistent, or unclear.

Representatives of the North Dakota Council of Educational Leaders, DPI, North Dakota Small Organized Schools, and the North Dakota School Boards Association testified in support of the study. The testimony noted the last legislative study and statutory rewrite of elementary and secondary education law occurred in the late 1990s and was completed in 2001 and the title needs to be reviewed to ensure clarity and consistency.

### **Background**

The 1995-96 interim Education Finance Committee, which reviewed a performance audit of DPI, found issues highlighted within the audit were indicative of a pressing need to review all provisions of Title 15, which related to elementary and secondary education, because certain sections within the title were found to be duplicative, inconsistent, or unclear in their intent and requirements. Subsequent interim studies in 1997-98 and 1999-2000 determined chapters not relating directly to K-12 education should remain in Title 15, while those relating directly to K-12 education should become a part of a new Title 15.1. The interim committees recommended House Bill No. 1034 (1999) and House Bill No. 1045 (2001). The bills arranged chapters in a newly created Title 15.1 in a conceptually appropriate manner that accurately reflected the manner in which business was conducted at the school level, the school district level, and within DPI.

Since the 2001 legislative session, there have been 257 bills enacted which primarily affected Title 15.1. Title 15.1 currently consists of 42 chapters, one of which has been repealed.

### **Testimony and Committee Considerations**

There was not a consensus among the committee members whether a full rewrite of Title 15.1 was necessary. Because Title 15.1 was enacted as part of a rewrite completed less than 20 years ago, committee members indicated amending necessary provisions in Title 15.1 may be sufficient. The committee generally agreed if a complete rewrite of Title 15.1 was necessary, it would require multiple interims to complete. The committee noted the first step is identifying duplicative, inconsistent, or unnecessary provisions in Title 15.1. The committee urged stakeholders and educators to inform the committee of issues of concern in Title 15.1.

The committee received testimony and information from an education stakeholder group regarding a review of statutory provisions in Title 15.1 to determine if provisions were obsolete or redundant and could be amended without making substantive changes to the provisions. The review identified several changes that could be made to provisions in Title 15.1 by repealing obsolete and redundant provisions.

The committee considered a bill draft relating to the repeal of six obsolete and redundant provisions in Title 15.1. The bill draft would repeal six sections relating to usage of the education stabilization fund, the revolving printing fund, school reports, the scholarships for 2009-10 high school graduates, district participation in the Goals 2000 Educate America Act, and a report on the use of state funds for professional development. The committee concluded and interested parties and stakeholders agreed the sections included in the bill draft are no longer necessary and can be repealed. The committee indicated additional provisions in Title 15.1 that may require substantive changes can be addressed during the legislative session. The bill draft was supported by several education stakeholders. The committee received no testimony in opposition to the bill draft.

### **Recommendations**

The committee recommends [Senate Bill No. 2028](#) relating to the repeal of obsolete and redundant provisions in Title 15.1.

## **CORONAVIRUS-RELATED EDUCATION ISSUES**

The committee received testimony and information related to Coronavirus (COVID-19) related education issues due to the ongoing pandemic.

### **Department of Public Instruction**

According to DPI, the state applied for and received \$33.1 million dollars of federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding, approximately \$30.3 million of which was provided to school districts for use in mitigating the effects of the pandemic. The funding is a part of the CARES education stabilization funding, and is provided through the Elementary and Secondary School Emergency Relief (ESSER) fund under Section 18003 of the CARES Act. Pursuant to the federal law, the amount received by each school district was based on the proportion of Title I funding the district receives, but districts were not required to follow Title I restrictions when determining how to use the funds. School districts may use ESSER funds to reimburse for eligible COVID-19-related expenditures. Schools seeking funds were advised to submit a request and preliminary budget to the department explaining how the school district anticipates using ESSER funds. The CARES Act requires each school district to report how their schools spent the allocated funds within 30 days after the end of each quarter. According to the testimony, 148 of the state's 166 school districts that accepted CARES Act funds have submitted the quarterly report as required.

According to the testimony, the DPI and the Information Technology Department developed a PowerSchool element to allow schools to document the instruction method being used with each student, including face-to-face, distance learning, or a hybrid approach. It was noted one of the most pressing policy issues to consider related to COVID-19 is determining how to provide adequate and equitable funding for learning. Concerns were expressed that under the alternative methods of learning, it will be difficult to measure instructional time and the learning progress of students. Other policy issues discovered included the implementation of a potential online learning funding formula, a review of open enrollments and tuition waiver deadlines, an examination of the impact of home education on public school operations, how to address cross-border payments, the instructional hours requirement, and the role of CDE in providing educational options for students during the pandemic.

### **Department of Human Services**

A representative of DHS provided information regarding the impact of COVID-19 on student behavioral and mental health. The department reports resources for parents, caregivers, and students related to behavioral health support and COVID-19 are available on the department's webpage.

## **REPORTS**

The committee received a report from ESPB regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board. The survey, which was sent to all teacher applicants who had corresponded with ESPB via email, asked individuals about the quality, timeliness, availability, courtesy, knowledge, staff responsiveness, ease of obtaining services, and the cost and value of interacting with ESPB.

The committee received a report from ESPB regarding the status of the alternative teacher certification program. The report included required information regarding the number of teacher licenses issued under an alternative teacher certification program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The report indicated 10 teachers have been issued teaching permits under the program. The report included a recommendation to continue the program.

The committee received a report DPI regarding assessment data and the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide. According to the report, 37 assessments were administered by DPI during the 2018-19 school year. Approximately 59,000 students participated in the assessments.

The committee received a report from a representative of DPI regarding requests from a school or school district for a waiver of any rule governing the accreditation of schools.

The committee received a report from DPI regarding waivers applications under Section 15.1-06-08.1, requests from schools or school districts for a waiver of any rule governing the accreditation of schools, and the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation date results. The report indicated 30 schools in the state are operating on a waiver. According to the report, six school districts are in the implementation planning phase of the innovation education program, with another eight districts expressing interest in the program.

The committee received a report from DPI regarding updates and the collaborative report on the statewide prekindergarten through grade twelve education strategic vision. The statewide prekindergarten through grade twelve education strategic vision was developed through input and participation provided by a steering committee consisting of representatives of 24 state-level education entities and stakeholder groups. The steering committee developed a shared education strategic vision for the state consisting of identified areas of improvement for prekindergarten through grade twelve education in the state. The report included components of the strategic plan that align to the developed statewide education strategic vision.

The committee received a report from DPI regarding proposed changes to the state accountability plan. State law requires the Superintendent of Public Instruction to present proposed changes to the state accountability plan, as required under the Every Student Succeeds Act of 2015, to the Legislative Management before the superintendent may submit the proposed changes to the United States Department of Education. Due to the COVID-19 pandemic, the statewide Every Student Succeeds Act planning team determined it necessary to propose changes to the state accountability plan as the state moved to distance learning, making the assessment and measurement of school accountability under the approved accountability plan impossible.

The committee received a report from the Kindergarten Through Grade Twelve Education Coordination Council regarding the activities of the council. The council measures the state's progress toward the goals established by the prekindergarten through grade twelve education strategic vision. The council's plan to establish and deliver benchmarks and accountability for the strategic vision was interrupted by the COVID-19 pandemic. The council provided recommendations on the restart guidance documents provided to schools during the pandemic.

# EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee was assigned the following responsibilities:

- Receive annual reports from the Board of Trustees of the Teachers' Fund for Retirement (TFFR) regarding the annual test of actuarial adequacy of the TFFR statutory contribution rates. (North Dakota Century Code Section 15-39.1-10.11)
- Study the feasibility and desirability of the Public Employees Retirement System (PERS) entering a separate contract for prescription drug coverage under the uniform group insurance program. The Legislative Management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve-out for prescription drug coverage under the uniform group insurance program. (Section 3 of House Bill No. 1374 (2019))
- Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans. (Section 54-35-02.4)
- Receive periodic reports from the Office of Management and Budget (OMB) Human Resource Management Services Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. (Section 54-06-31)
- Receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service. (Section 54-06-32)
- Receive a biennial report from OMB summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. (Section 54-06-33)
- Receive a biennial report from OMB summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. (Section 54-06-34)
- Approve terminology adopted by the Board of Trustees of the TFFR to comply with applicable federal statutes or rules. (Section 15-39.1-35)
- Receive notice from the Board of Trustees of the TFFR of any necessary or desirable changes in statutes relating to the TFFR. (Section 15-39.1-05.2)
- Approve terminology adopted by the PERS Board to comply with federal requirements. (Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2)
- Receive notice from firefighters relief associations of each association's intent to provide a substitution monthly service pension. (Section 18-11-15)

Committee members were Representatives Mike Lefor (Chairman), Jason Dockter, LaurieBeth Hager, Craig Johnson, Vernon Laning, Matthew Ruby, and Austen Schauer and Senators Howard C. Anderson, Jr., Brad Bekkedahl, Dick Dever, Karen K. Krebsbach, Richard Marcellais, and Kristin Roers.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## BACKGROUND

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement.

The committee may solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides any legislation

enacted in contravention of these requirements is invalid, and benefits provided under that legislation must be reduced to the level in effect before enactment.

### **Teachers' Fund for Retirement**

Chapter 15-39, which was repealed in 1971, established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provided a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 at which time TFFR was established with the enactment of Chapter 15-39.1.

The Teachers' Fund for Retirement became effective July 1, 1971, and is governed by its board of trustees. The State Investment Board is responsible for the investment of the trust assets, although the TFFR Board of Trustees establishes the asset allocation policy. The Retirement and Investment Office is the administrative agency for TFFR. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan.

All certified teachers of a public school in the state participate in TFFR, including supervisors, principals, and administrators. Noncertified employees, such as instructional aides, facility maintenance, secretaries, and drivers, are not allowed to participate in TFFR. Eligible employees become members on the date of employment.

The district or other employer that employs a member contributes a percentage of the member's salary. This percentage consists of a base percentage of 7.75 percent, plus additions. Effective July 1, 2008, the employer contribution rate became 8.25 percent; effective July 1, 2010, the employer contribution rate became 8.75 percent; effective July 1, 2012, the employer contribution rate became 10.75 percent; and effective July 1, 2014, the employer contribution rate became 12.75 percent. However, the employer contribution rate will revert to 7.75 percent when TFFR is 100 percent funded on an actuarial basis. The contribution rate will not increase automatically if the funded ratio later falls below 100 percent.

Before July 1, 2012, all active members contributed 7.75 percent of salary per year to TFFR. The employer may "pick up" the member's contributions under the provisions of Internal Revenue Code Section 414(h). The member contribution rate was increased from 7.75 to 9.75 percent effective July 1, 2012, and increased to 11.75 percent effective July 1, 2014. The 4 percent added to the member contribution rate will remain in effect until TFFR is 100 percent funded on an actuarial basis. At that point, the member contribution rate will revert to 7.75 percent. The member's total earnings are used for salary purposes, including overtime and nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation, such as fringe benefits or unused sick or vacation leave.

Members who joined TFFR by June 30, 2008, are Tier 1 members, while members who join after that date are Tier 2 members. Final average compensation, for purposes of determining retirement benefits, is the average of the member's highest 3 plan-year salaries for Tier 1 members or 5 plan-year salaries for Tier 2 members. Monthly benefits are based on one-twelfth of this amount. Tier 1 members are eligible for a normal service retirement benefit at age 65 with credit for 3 years of service, or if earlier, if the sum of the member's age and years of service is at least 85. Effective June 30, 2013, Tier 1 members who are at least age 55 and vested--3 years of service--as of the effective date, or if the sum of the member's age and service is at least 65, are eligible for normal service retirement benefits and are grandfathered. Those who do not meet these criteria as of June 30, 2013, may retire upon normal retirement on or after age 65 with credit for 3 years of service, or earlier, if the sum of the member's age is at least 90, with a minimum age of 60. A Tier 2 member may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if the sum of the member's age and years of service is at least 90. Effective July 1, 2013, Tier 2 members may retire upon normal retirement on or after age 65 with credit for 5 years of service, or earlier, if the sum of the member's age and service is at least 90, with the added requirement that the member has reached a minimum age of 60.

The monthly retirement benefit is 2 percent of final average monthly compensation times years of service. Benefits are paid as a monthly life annuity, with a guarantee if the payments made do not exceed the member's contributions plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

To receive a death benefit, death must occur while being an active, inactive, or a nonretired member. Upon the death of a nonvested member, a refund of the member's contributions and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit or a life annuity of the normal retirement benefit "popping-up" to the original life annuity based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

A Tier 1 member leaving covered employment with less than 3 years of service and a Tier 2 member leaving covered employment with less than 5 years of service is eligible to withdraw or receive a refund benefit. Optionally, a vested member may withdraw the member's contributions plus interest in lieu of the deferred benefit otherwise due. A member

who withdraws receives a lump sum payment of the member's employee contributions plus interest credited on these contributions. Interest is credited at 6 percent per year.

At times, the law relating to TFFR retirement benefits has been amended to grant certain postretirement benefit increases. However, TFFR has no automatic cost-of-living increase features.

### **Public Employees Retirement System**

The Public Employees Retirement System is governed primarily by Chapters 54-52, 54-52.1, 54-52.2, 54-52.3, and 54-52.6. The PERS retirement benefits include the defined contribution (DC) plan and the defined benefit plan, the retiree health insurance credit (RHIC), and the 457 deferred compensation plan. The PERS insurance plans include health insurance for active and retired members, life insurance, dental insurance, vision insurance, and long-term care insurance.

The retirement system is supervised by the PERS Board and covers most public employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, may choose to be members. Officials appointed to office after that date are required to be members. Most North Dakota Supreme Court justices and district court judges are members of the plan but receive benefits that differ from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the PERS Board. Political subdivision employees are not eligible to participate in the DC retirement plan.

The PERS main system defined benefit plan is funded from employer contributions, employee contributions, and investment earnings. Contributions are calculated based on a percentage of gross pay. The defined benefit program is provided through the combined PERS fund--PERS main system, the judges' retirement system, the public safety system with prior PERS main system service, and the public safety system without prior PERS main system service--Highway Patrolmen's retirement system, and Job Service North Dakota retirement plan (Job Service).

#### **Retirement Tiers**

Receipt of retirement benefits is based on two dates establishing three tiers of retirement benefits for members under the combined PERS fund--January 1, 2016, and January 1, 2020. The three retirement benefits that vary based on the date of initial hire are the normal retirement age, final average salary multiplier, and receipt of the RHIC.

There are two normal retirement ages for retirement plan members:

- **Rule of 85** - Members of the PERS main system and judges' retirement system are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 85. Members of the public safety retirement system are eligible for a normal service retirement at age 55 and 3 eligible years of service or when age plus service is equal to at least 85.
- **Rule of 90 and minimum age of 60** - Members of the PERS main system first enrolled after December 31, 2015, are eligible for a normal service retirement benefit at age 65 or when age plus years of service is equal to at least 90 and the member attains a minimum age of 60.

There are two retirement benefit final average salary multipliers for retirement plan members:

- **2 percent and judges** - Members of the PERS main and public safety systems enrolled before January 1, 2020, have a retirement benefit calculated based on 2 percent of final average salary multiplied by years of service. The retirement benefit for a member of the judges' retirement system is 3.50 percent of final average salary for the first 10 years of service, 2.80 percent for each of the next 10 years of service, and 1.25 percent for service in excess of 20 years.
- **1.75 percent** - Members of the PERS main and public safety systems enrolled after December 31, 2019, have a retirement benefit calculated based on 1.75 percent of final average salary multiplied by years of service.

There are two classes of RHIC recipients for retirement plan members:

- **RHIC** - Members of the PERS main and public safety systems first enrolled before January 1, 2020, receive an RHIC.
- **No RHIC** - Members of the PERS main and public safety systems first enrolled after December 31, 2019, do not receive an RHIC.

#### **Surviving Spouse Retirement Benefits**

The surviving spouse of a PERS member may be eligible for benefits under the retirement system. The surviving spouse who is the sole refund beneficiary of a deceased member of the PERS main system or public safety system who

had accumulated at least 3 years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary only may choose a lump sum distribution of the accumulated balance. The preretirement death benefit may be a lump sum payment of the member's accumulated contributions with interest; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; a continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement; or a partial lump sum payment in addition to one of the annuity options. The surviving spouse of a deceased member of the judges' retirement system who had accumulated at least 5 years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest or 100 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. For members who are neither vested nor have a surviving spouse, the benefit is a lump sum payment of the member's accumulated contributions with interest.

### Retirement Benefits

The standard form of payment for members of the PERS main and public safety systems is a monthly benefit for life with a refund to the beneficiary at death of the remaining balance, if any, of accumulated member contributions. The standard form of payment for members of the judges' retirement system is a monthly benefit for life, with 50 percent payable to an eligible survivor. The final average salary is the average of the highest salary received by a member for any 36 months employed during the last 180 months of employment.

### Retirement System Contributions

Except for the employer contribution rate for the public safety system plans, contribution rates are specified by statute. For the PERS main system, from 1977 through 1989, the employer contribution was 5.12 percent of state employee salaries and the employee contribution was 4 percent. In lieu of state employee salary increases in 1983 and 1984, the state began to pay the 4 percent employee contribution. In 1989, the employer contribution was reduced by 1 percent and reallocated for an RHIC. In 2012, 2013, and 2014, the employer and employee contributions were each increased 1 percent each year.

The January 1, 2014, increase is scheduled to revert to the contribution rates in effect on July 1, 2013, following the first valuation of the PERS main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the PERS main system which is equal to or greater than 100 percent. The 2019 Legislative Assembly terminated the RHIC for new hires and the 1.14 percent was reallocated with the effect being for new hires the employer contribution increased by 1.14 percent to 8.26 percent.

1989 Through December 31, 2011		Effective January 1, 2012		Effective January 1, 2013		Effective January 1, 2014	
Employer	Employee	Employer	Employee	Employer	Employee	Employer	Employee
4.12%	4.00% <sup>1</sup>	5.12%	5.00% <sup>1</sup>	6.12%	6.00% <sup>1</sup>	7.12% <sup>2</sup>	7.00% <sup>1</sup>

<sup>1</sup>The state pays 4 percent of the employee share of retirement contributions.

<sup>2</sup>Senate Bill No. 2046 (2019) reallocated the 1.14 percent employer contribution for the RHIC to the main system defined benefit retirement plan for employees hired after December 31, 2019, resulting in a total employer contribution rate of 8.26 percent for employees hired after December 31, 2019.

### Retiree Health Insurance Credit Fund

The 1989 Legislative Assembly established an RHIC fund with the purpose of prefunding hospital benefits coverage; medical benefits coverage; prescription drug coverage under any health insurance program; and dental, vision, and long-term care benefits coverage under the uniform group insurance program for retired members of PERS and the Highway Patrolmen's retirement system receiving retirement benefits or surviving spouses of those retired members who have accumulated at least 10 years of service. The fund provides a monthly credit for health insurance benefits of \$5 multiplied by the retired members' years of service.

The employer contribution under PERS was reduced by 1 percent of the monthly salaries or wages of participating members, including participating judges, and the money was redirected to the RHIC fund. The 2009 Legislative Assembly increased the employer contribution to 1.14 percent of the monthly salaries or wages of participating members. The 2019 Legislative Assembly closed the program for new hires after December 31, 2019.

## ACTUARIAL REPORTS

### Teachers' Fund for Retirement

The committee received annual actuarial valuation reports on TFFR dated July 1, 2019, and July 1, 2020. The primary purposes of the valuation report are to report the TFFR's actuarial assets, calculate TFFR's liabilities, determine the funding policy actuarially determined contribution for fiscal year 2021 and compare to the statutory employer contribution, determine the effective amortization period, explore the reasons why the current valuation differs from the prior valuation,

and provide information for annual financial statements. In addition, the report provides information required by TFFR in connection with the Governmental Accounting Standards Board (GASB) Statement Nos. 67 and 68, the standards that set the accounting rules for public retirement systems and the employers that sponsor or contribute to these plans. Valuations are prepared annually, as of July 1 of each year, the first day of TFFR's plan and fiscal year.

Effective with the July 1, 2013, actuarial valuation, the TFFR Board of Trustees adopted an actuarial funding policy that provides direction on how to calculate an actuarially determined contribution. To determine the adequacy of the 12.75 percent statutory employer contribution rate, the rate is compared to the actuarially determined contribution. The actuarially determined contribution is equal to the sum of the employer normal cost rate and the level percentage of pay required to amortize the unfunded actuarial accrued liability over a 30-year closed period that began July 1, 2013. For this calculation, payroll is assumed to increase 3.25 percent per year. As of July 1, 2020, the actuarially determined contribution is 13.19 percent of payroll, compared to 12.84 percent on July 1, 2019. Therefore, the statutory employer contribution rate of 12.75 percent resulted in a contribution deficiency of .44 percent of payroll as of July 1, 2020.

As of June 30, 2019, the actuarial value of assets was \$2.75 billion, representing 103.6 percent of the market value of assets of \$2.65 billion. This 103.6 percent falls within the 20 percent corridor, so no further adjustment to the actuarial value of assets is necessary. Guidelines in Actuarial Standard of Practice Statement No. 44, selection and use of asset valuation methods for pension valuations, recommends asset values fall within a reasonable range around the corresponding market value. The actuarial asset method complies with these guidelines.

For the year ending June 30, 2020, the consulting actuary determined the asset return on a market value basis was 3.3 percent. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 6.2 percent, which represents an experience loss when compared to the assumed rate of 7.75 percent. Based on the actuarial value of assets, the funded ratio decreased to 65.7 percent, compared to 66.0 percent as of July 1, 2019. The net pension liability increased from \$1,377,253,104 as of June 30, 2019, to \$1,530,503,462 as of June 30, 2020.

The fund's cashflow (contributions minus benefit payments, refunds, and expenses) as a percentage of the market value of assets is a deficiency of 2.0 percent as of June 30, 2020, compared to a deficiency of 1.9 percent as of June 30, 2019. This decrease in net cashflow primarily is due to the growth of benefit payments and expenses. It is not unusual for a mature pension system to operate with minor negative cashflow as returns on investments generally exceed the net cash outflow and assets continue to rise; however, as the degree of negative cashflow increases, the plan's vulnerability to investment market volatility increases.

As of July 1, 2020, the fund had 11,347 active members, 1,715 inactive vested members, 1,132 inactive nonvested members, and 9,036 retirees and beneficiaries. Plan costs are affected by the age, years of service, and compensation of active members. The average age of active members was 41.8 years, and active members have 11.7 average years of service. Average compensation for active members was \$60,893. As of July 1, 2020, 8,218 retirees and 818 beneficiaries were receiving total monthly benefits of \$19,116,138 with the average monthly benefit amount for the retirees and beneficiaries being \$2,116.

### **Public Employees Retirement System**

The committee received annual actuarial valuation reports as of July 1, 2019, and of July 1, 2020, on the following PERS funds:

- Combined PERS fund:
  - PERS main system;
  - Judges' retirement fund;
  - Public safety system with prior PERS main system service; and
  - Public safety system without prior PERS main system service;
- Highway Patrolmen's retirement system;
- RHIC fund; and
- Job Service.

The actuarial valuations are performed to determine whether the assets and statutory contributions are anticipated to be sufficient to provide the prescribed benefits. The purpose of the actuarial valuations is to determine whether the contribution is sufficient to meet the long-term obligations to the members covered by the funds in accordance with the benefit provisions of the funds.



## Plan Funding

The statutory or approved employer and employee contribution rates for fiscal year 2021 are:

	Employee Rate	Employer Rate
PERS main system	7.00%	7.12%
Judges' retirement system	8.00%	17.52%
Public safety system with prior PERS main system service	5.50% <sup>1</sup>	9.81%
Public safety system without prior PERS main system service	5.50%	7.93%
Highway Patrolmen's retirement system	13.30%	19.70%
RHIC <sup>2</sup>	0%	1.14%
Job Service	7.00%	0% <sup>3</sup>

<sup>1</sup>Employee contribution rate for Bureau of Criminal Investigation is 6.00 percent.

<sup>2</sup>RHIC rate for members first enrolled after December 31, 2019, is made to the Main system for Main system members and to the DC system for DC system members.

<sup>3</sup>Due to the overfunded status of the Job Service fund, an employer contribution is not required.

The comparison of total--employer and employee--statutory or approved contribution rates and the total actuarial contribution rates for fiscal year 2021 are:

	Actuarial Contribution Rate	Statutory/Approved Contribution Rate	Statutory Rate Excess - Deficiency
PERS main system	19.94%	14.12%	(5.82%)
Judges' retirement system	16.81%	25.52%	8.71%
Public safety system with prior PERS main system service	14.87%	15.31%	.44%
Public safety system without prior PERS main system service	13.22%	13.43%	.21%
Highway Patrolmen's retirement system	37.07%	33.00%	(4.07%)
RHIC	1.11%	1.14%	0.03%

The following is a comparison of this year's total actuarial contribution rates to last year's rates:

	Fiscal Year 2020	Fiscal Year 2021
PERS main system	19.22%	19.94%
Judges' retirement system	10.83%	16.81%
Public safety system with prior PERS main system service	13.54%	14.87%
Public safety system without prior PERS main system service	11.87%	13.22%
Highway Patrolmen's retirement system	42.68%	37.07%
RHIC	1.02%	1.11%

## Demographics

The following demographic data was reported for active members as of July 1, 2020:

Category	Year Beginning July 1, 2020
<b>PERS main system</b>	
Number of active members	23,487
Average age	46.3
Average service credit	9.5
Total compensation	\$1,103,120,694
Average compensation	\$46,967
<b>Judges' retirement system</b>	
Number of active members	57
Average age	56.4
Average service credit	9.5
Total compensation	\$8,438,678
Average compensation	\$148,047
<b>Public safety system with prior PERS main system service</b>	
Number of active members	745
Average age	36.4
Average service credit	6.1
Total compensation	\$45,383,846
Average compensation	\$60,918
<b>Public safety system without prior PERS main system service</b>	
Number of active members	200
Average age	37.6
Average service credit	4.2
Total compensation	\$10,824,717
Average compensation	\$54,124

Category	Year Beginning July 1, 2020
<b>Combined PERS fund</b>	
Number of active members	24,489
Average age	45.9
Average service credit	9.3
Total compensation	\$1,167,767,935
Average compensation	\$47,685
<b>Highway Patrolmen's retirement system</b>	
Number of active members	154
Average age	37.7
Average service credit	10.7
Total compensation	\$11,409,711
Average compensation	\$74,089
<b>Job Service</b>	
Number of active members	5
Average age	65.1
Average service credit	44.2
Total compensation	\$314,607
Average compensation	\$62,921
<b>RHIC</b>	
Number of active members	23,495
Average age	46.3
Average service credit	9.8
Total compensation	\$1,139,970,530
Average compensation	\$48,520

### Funding Ratio

The following is a comparison of this year's actuarial funded ratio to last year's ratio:

	July 1, 2019		July 1, 2020	
	Unfunded Actuarial Liability	Funded Ratio	Unfunded Actuarial Liability	Funded Ratio
PERS main system	\$1,186,285,938	71.3%	\$1,444,758,987	68.3%
Judges' retirement system	(\$10,630,281)	123.9%	(\$7,017,349)	113.7%
Public safety system with prior PERS main system service	\$12,688,303	84.0%	\$19,198,946	80.0%
Public safety system without prior PERS main system service	(\$885,903)	109.8%	(\$115,903)	100.9%
Highway Patrolmen's retirement system	\$25,412,734	76.1%	\$34,408,702	71.2%
RHIC	\$80,229,255	63.2%	\$81,226,983	64.6%
Job Service	(\$31,508,776)	147.5%	(\$32,739,941)	151.0%

## PHARMACY BENEFITS STUDY

Section 3 of House Bill No. 1374 provided for the study of the feasibility and desirability of PERS entering a separate contract for prescription drug coverage under the uniform group insurance program. The study charge authorized the Legislative Management to contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve-out for prescription drug coverage under the uniform group insurance program.

### Legislative History

As introduced, House Bill No. 1374 would have required the PERS uniform group insurance program to receive its pharmacy benefits management (PBM) services through the Department of Human Services Medical Assistance program. As amended by the House, the services would have been permissive instead of mandatory, and as amended by the Senate, the bill no longer addressed PERS. However, the conference committee adopted amendments to address PERS prescription drug coverage.

Section 1 of the bill requires the Department of Human Services to establish a pharmacy management program for Medicaid Expansion prescription drug coverage. This section does not address PERS.

Section 2 of the bill addresses PERS, providing:

- Except for Medicare Part D, PERS may not enter or renew a contract for prescription drug coverage unless the contract authorizes PERS to conduct a performance audit of the prescription drug coverage and related PBM services. This provision also specifies required contract provisions.
- PERS shall use an independent auditor and provides the auditor, the Insurance Department, and the Employee Benefits Programs Committee may access any information PERS may access.

- If PERS contracts directly with a PBM or provides prescription drug coverage through a self-insurance plan, the contract must require the PBM to disclose to PERS all rebates and any other fees that provide the PBM with sources of income under the contract.

In conference committee testimony indicated support to have a Legislative Management study conducted with the assistance of a consultant to consider the pros and cons of PERS carving out drug benefits from the medical benefits.

## **Background**

### **Century Code**

The PERS uniform group insurance program is created under Section 54-52.1-02, which provides the program must provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage. Although prescription drug coverage generally is considered part of medical benefits coverage, the law authorizes the program to include multiple subgroups of benefits, including prescription drug coverage.

In bidding for uniform group insurance, Section 54-52.1-04(1) authorizes the PERS Board to receive bids separately for all or parts of the prescription drug benefits coverage component of medical benefits coverage. In accepting a bid, the board must act to best serve the interests of the state and the state's eligible employees, including consideration of the economy to be effected, the ease of administration, the adequacy of the coverage, the financial position of the carrier, and the reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

Under Section 54-52.1-04(3), the health benefits coverage may be provided through a fully insured health insurance plan, a health maintenance organization, or a self-insurance health plan. Furthermore, Section 54-52.1-04.2(1) makes it clear PERS may carve out prescription drug benefits coverage and provide coverage through a fully insured health insurance plan or through a self-insurance health plan.

### **Uniform Group Insurance Program Health Benefits Coverage**

Senate Bill No. 176 (1963), codified as Chapter 52-12, authorized a state agency, alone or in conjunction with another state agency, to enter a group hospitalization and medical care plan and group life insurance. The intent was "to promote the economy and efficiency of employment in the state's service by making available hospitalization and medical care and group life insurance protection to state employees and their families, thereby enabling the employees to care for themselves and their dependents in times of accident or illness, and which by its protection will improve state employment within the state, reduce excessive personnel turnover and offer suitable attraction to high grade men and women to enter the service of state employment."

House Bill No. 1093 (1971) repealed Chapter 52-12 and created Chapter 54-52.1, which created the PERS uniform group insurance program, the basis for the current program. Beginning in the mid-1970s and continuing until 1983, PERS contracted for a fully insured health plan. From 1983 to 1989, PERS provided the health care benefits through a self-insurance health plan. From 1989 to the present, PERS has contracted for a hybrid fully insured health plan. The hybrid plan provides for profit sharing and until 2015 also provided for loss sharing.

The PERS health benefits contract last went out to bid in 2014, at which time PERS entered a 2-year contract for the 2015-17 biennium. The Public Employees Retirement System renewed the contract for the 2017-19 and 2019-21 bienniums. The contract went out to bid the summer of 2020 for the 2021-23 biennium.

Historically, under the PERS uniform group insurance health benefits, pharmacy benefits have been bundled with medical benefits. However, in preparation for the 2014 health benefits plan request for proposal, PERS considered unbundling the pharmacy benefits, providing the pharmacy benefits under a self-insurance health plan. In the course of researching the concept of unbundling, PERS concluded it was unclear as to whether Section 54-52.1-04.2 authorized PERS to unbundle the pharmacy benefits from the medical benefits.

As a result of PERS interpretation of Section 54-52.1-04.2, House Bill No. 1028 (2019), recommended by the 2017-18 interim Health Care Reform Review Committee, and Senate Bill No. 2045 (2019), introduced by PERS, were passed. These bills amended Section 54-52.1-04.2 to clarify pharmacy benefits may be unbundled and provided through a self-insurance health plan and the circumstances under which PERS may move to a self-insurance health plan.

### **Health Care Reform Review Committee**

During the 2017-18 interim, by Legislative Management directive, the Health Care Reform Review Committee studied the public employee health benefits plan, including the feasibility and desirability of transitioning to a self-insurance plan. The study was required to include a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance plan.

As part of this study, the committee received testimony from a representative of Pharmacy Benefit Consultants (PBC) regarding pharmacy benefits coverage under the PERS health benefits program. The presentation addressed why health plans do not control prescription coverage costs and how to fix this problem. Pharmacy Benefit Consultants testified PERS provides pharmacy benefits for its main plan through a bundled plan. Pharmacy Benefit Consultants testified virtually all bundled contracts:

- Are entirely devoid of specific drug pricing terms and guarantees or meaningful rebate guarantees;
- Are entirely devoid of specific terms related to core matters that impact drugs' costs, such as the formulary and prior authorization, step therapy, and quantity limit programs;
- Allow the medical provider and pharmacy provider to arrange their structure, with potential hidden fees and "profit spreads" for both entities; and
- If the medical provider is integrated vertically with subsidiary hospitals or pharmacies, allow the medical provider to steer use to its subsidiaries, which may be higher cost.

Additionally, PBC testified most bundled contracts allow the medical provider and pharmacy provider to move drugs between the medical side and the PBM side. The same drugs can have very different costs based on whether the drug is invoiced on the medical side or the PBM side. On the medical side, drugs costs often are entirely unknown; whereas, on the PBM side, payers can determine the list price of each drug and if payers obtain claims data, can determine the discount provided.

Pharmacy Benefit Consultants testified virtually all carved out coverage is self-insured coverage provided by PBMs. Pharmacy Benefit Consultants testified unless PERS can obtain a bundled contract that pins down drug pricing terms and guarantees, and gives the state real control over numerous other core matters that impact cost, which is highly unlikely, PERS should carve out its prescription drug coverage.

Pharmacy Benefit Consultants testified to control drug costs, a health plan must ensure it has a PBM contract free of all loopholes and then take control of all matters. After obtaining a loophole-free PBM contract, PERS needs to exercise its contract rights by:

- Obtaining net cost information for key drugs;
- Customizing its formulary;
- Customizing its programs;
- Exercising its rights to renegotiate retail and mail guarantees on an annual basis, and specialty drug guarantees on a quarterly basis; and
- Exercising its carve-out right for any specialty drugs if the PBM is overcharging for any specialty drugs.

Additionally, PBC testified once PERS has a loophole-free PBM contract, PERS needs to monitor and respond to marketplace changes to:

- Analyze and determine which new-to-market drugs to cover;
- Track brand drugs that lose patent protection and require plan beneficiaries to use chemically identical generic drugs when they become available;
- Track new biologic drugs, compare the net costs of the brands and biologics, and steer use to the lowest cost drugs; and
- Track large increases in drugs prices and stop covering those with alternative lower-cost replacements.

To accomplish the PBC recommendations, PBC suggested PERS either retain a clinical and financial expert in house or retain third-party consulting with the necessary expertise.

Although the committee did not make any specific recommendations regarding whether PERS should unbundle its prescription drug benefits or transition to a self-insurance health plan, the committee recommended House Bill No. 1028, which updated the PERS self-insurance health plan law and clarified the Insurance Commissioner has regulatory authority over a self-insurance health plan. The updates in the law include clarification prescription drug benefits may be unbundled and provided through a self-insurance health plan and provide PERS may transition to a self-insurance health plan if PERS determines the self-insurance health plan best serves the interests of the state and the state's eligible employees.

### **Consultant Report**

The committee contracted with Deloitte Consulting, LLP to conduct a study of some advantages and disadvantages of PERS entering a separate prescription drug contract under the uniform group insurance program.

## Study Format

The study included a review of the market forces and structural constraints that will factor into any decision the state makes to pursue a carve-out prescription drug program. These topics were summarized into the following five primary sections, with considerations for a prescription drug carve-out included within each section:

1. Characteristics of the North Dakota health insurance market.
  - a. North Dakota's health insurance market.
  - b. North Dakota's pharmacy ownership law.
  - c. Section 54-52.1-04.16, created by House Bill No. 1374.
  - d. Prescription drug carve-out considerations based on the North Dakota health insurance market.
2. Prescription drug market trends and management strategies.
  - a. Rising health care costs and the impact of prescription drugs.
  - b. Chronic disease.
  - c. Specialty drugs.
  - d. Tools to manage appropriate drug utilization and control costs.
  - e. Prescription drug carve-out considerations based on prescription drug market trends and utilization management strategies.
3. Fully insured and self-insured contracts.
  - a. Fully insured contracts.
  - b. Self-insured contracts.
  - c. Stop-loss insurance.
  - d. Prescription drug carve-out considerations based on insurance contract funding options.
4. Prescription drug contracts.
  - a. Financial terms.
  - b. Additional components of cost.
  - c. Spread pricing contracts.
  - d. Passthrough contracts.
  - e. Hybrid and alternative contracts.
  - f. Prescription drug carve-out considerations based on prescription drug pricing and contracts.
5. Pharmacy benefit managers and carve-out trends.
  - a. Pharmacy benefit managers.
  - b. Pharmacy benefit carve-out trends.
  - c. Considerations based on carve-out prescription drug trends and shifting alignments between PBMs and health insurers.

## Study Findings

The study indicated any considerations for transitioning from the fully insured uniform group insurance program to a carve-out prescription drug program would be based on the availability and feasibility of different options. The competitive procurement process for the uniform group insurance program will highlight the relative importance of each consideration in the context of the alternatives available to PERS. The following is a summary of the considerations outlined in the study:

- A carve-out prescription drug plan likely would require a change to self-insurance for prescription drugs. Fully insured, carve-out prescription drug benefits are not commonly available in the market. The competitive procurement will determine the insurance options available for the 2021-23 biennium.
- Carving out the pharmacy benefits allows for greater flexibility to procure benefits arrangements determined to be in the best interest of the state. Under the current arrangement, the PERS Board selects the insurer that presents the best overall value for medical and pharmacy, even though the best value for medical and pharmacy may not necessarily be the same provider. Carving out the prescription drug benefit gives the PERS Board the flexibility to select the best value for each benefit.
- Contracting for carve-out pharmacy benefits under a self-insured plan allows for more choice in administrators. The insurance market in North Dakota is concentrated and most commercially insured business in the state is administered by Blue Cross Blue Shield of North Dakota or Sanford Health Plan. There are many PBMs that administer self-insured benefit programs which do not offer fully insured options or medical benefits.

- Carving out prescription drug benefits allows for more control of aspects of the prescription drug plan. As described by PBC in its testimony to the Health Care Reform Review Committee, carving out the prescription drug benefit will give the PERS Board more control over the prescription drug contract, formulary, and clinical management programs.
- Self-insured, carve-out, prescription drug benefits allow for greater visibility into costs. Most fully insured arrangements do not provide detailed cost data and financial information because the insurer assumes all the risk. Self-insured arrangements offer a higher degree of control and visibility into the underlying cost components of the contract. North Dakota law mandates access to prescription drug financial information regardless of the insurance arrangement. Due to the state law requirements, some insurers may not offer fully insured insurance options, or compliant fully insured options, for the uniform group insurance program request for proposal.
- A self-insured, carve-out, prescription drug plan would eliminate the downside risk protection of the modified fully insured contract. The modified fully insured arrangement with gain-sharing offers the advantage of fixed monthly premiums and no risk of loss if claims exceed premiums. A self-insured plan would require the state to assume all claims risk or purchase stop-loss insurance to insure against large claim losses.
- A self-insured, carve-out, prescription drug plan would result in more claims volatility than the modified fully insured contract. Prescription drug costs continue to rise, driven by the prevalence of chronic conditions and specialty drugs that treat high-cost, complex conditions. Additionally, market events such as Coronavirus (COVID-19) could have a dramatic impact on claims costs. The size of the PERS population will help minimize the volatility associated with large claims or unpredictable risk; however, claims under a self-insured contract will fluctuate more than a fixed premium agreement.
- Reserve funding may need to be increased in a self-insured, carve-out, prescription drug arrangement. The state will need to build a reserve fund for fluctuations in claims, costs, and expenses. Under current statute, the balance amount would need to be between 2 and 4 months of expected claims. Depending on the funding required and the availability of funds, higher premiums may be necessary to build the reserve.
- Stop-loss insurance may introduce new costs to the plan. Under a self-insured plan, stop-loss insurance could be purchased to mitigate some of the risk of large claims. Given the size of PERS and tolerance for risk, stop-loss insurance may not be necessary. If PERS implements a self-insured, carve-out, prescription drug plan while maintaining a fully insured medical plan, stop-loss coverage options may be limited or unavailable.
- Direct or indirect carve-out costs may be incurred. It is common for insurers and administrators to charge carve-out fees as a disincentive to carving-out the prescription drug benefit. Fees may include increased medical premiums, higher medical administrative service fees, file feed charges, and implementation fees.
- A carve-out may add administrative complexity for PERS. Carving-out the prescription drug benefit to a separate vendor may create the need to add resources, including additional personnel, to manage the third party. A carve-out prescription drug plan typically requires a separate contract, separate account and customer service teams, separate invoicing and financial requirements, separate reporting systems, and separate programs and services. Carving out also likely requires additional administrative tasks such as sharing additional claims and eligibility files, coordinating plan documents, monitoring, and reconciling separate financial reporting. The Public Employees Retirement System also supports a variety of wellness and disease management programs that are reliant on data and collaboration with the medical and prescription drug insurer which would need to be replicated in a carve-out arrangement. These additional administrative needs likely would result in PERS requiring additional staff.
- Accumulator integration for high-deductible plans would require additional coordination. Plan designs that feature combined medical and prescription drug deductibles and out-of-pocket maximums (most frequently high-deductible health plans) require careful tracking to accurately account for member out-of-pocket payments. In a carve-out prescription drug program, file feeds with claims information need to be exchanged regularly between the medical and prescription drug plan to track these accumulators. Most medical and prescription drug administrators can integrate these accumulator files but updates to member accumulators may be slower than if the medical and prescription drug benefits are combined under a single insurer.
- A carve-out may impact clinical integration. A carve-out contract could result in less clinical integration between the medical and prescription drug administrators. Insurers combine medical and pharmacy data to monitor for issues, such as gaps in care; adherence; fraud, waste, and abuse; track health outcomes; and identify potential risks. Less integration may create challenges in combining data efficiently and coordinating between medical and prescription drug administrators to achieve clinical outcomes. Plan sponsors can mitigate some of the risk of reduced clinical integration by proactively engaging the medical and prescription drug administrators to support clinical integration through contractual, reporting, and service level agreements.
- Delivering an integrated benefits experience to members may be more difficult in a carve-out arrangement. Carving out the prescription benefit has an impact on the plan member experience. Members may have different identification cards, different mobile applications and websites for each vendor, may need to contact different

service teams, and may receive different communications. Members will need information on how their benefits work when administered by different companies, as well as support for different administrative policies under each vendor agreement. It is also important to align benefit policies, including coverage designs, rules, requirements, and payment procedures across medical and prescription drug programs. This is particularly important for patients that receive treatment that could be paid under the medical or the prescription drug benefit, like cancer.

## **Testimony and Committee Considerations**

### **Pharmacists**

In addition to receiving the report from Deloitte Consulting, LLP, the committee received testimony from a representative of the North Dakota Pharmacists Association in response to the report. The testimony indicated the association does not take a position on whether PERS should remain fully insured or move to a self-insured model.

The committee received testimony indicating independent pharmacies in the state do not have the same bargaining power as large chain pharmacies and, as a result, independent pharmacies are reimbursed less than the larger pharmacies. Additionally, under the current PERS health benefit carrier there have been two rate cuts to pharmacies resulting in PERS being the lowest payer for the majority of North Dakota pharmacies. Finally, with the exception of sole rural pharmacies, the professional dispensing rate paid to pharmacists essentially has been eliminated under the PERS PBM arrangement.

The committee also received testimony indicating a primary reason for the upward trend in drug costs is the cost of specialty drugs. The amount the PERS population spends on specialty drugs for inflammatory conditions and cancer is higher than the general population. Testimony indicated ways to help reduce specialty drug costs include pinning down a specialty drug definition that is not vague by design, negotiating certain price guarantees or discounts from the PBM, and eliminating spread pricing on specialty drugs.

Testimony provided there is little to no transparency regarding prescription drug discounts and PERS has no way of verifying if it actually is getting a good deal. The pharmacy benefits manager controls the maximum allowable cost list for generic drugs and often pays the pharmacy from one list but bills the employer from a completely different drug pricing list. Additionally, PBMs are sophisticated and formulate forms of income or financial incentive classified as something other than a rebate to reduce the total amount of rebate the PBMs have to provide to insurers or plan sponsors.

### **Neighboring States**

The committee received information regarding the public employee pharmacy benefit structure of Minnesota, Montana, and South Dakota. All three states have a self-insurance plan with a pharmacy carve-out.

### **Bill Draft**

The committee considered a bill draft that would provide PERS the flexibility to purchase stop-loss insurance for self-funded pharmacy benefits. Testimony regarding the bill draft indicated the bill draft is necessary because the melding of the language in House Bill No. 1028 and Senate Bill No. 2045 resulted in the unintended consequence of prohibiting PERS from making individual stop-loss coverage for prescription drug benefits a part of a self-insurance health plan.

### **Recommendation**

The committee recommends [House Bill No. 1029](#) to provide PERS the flexibility to purchase stop-loss insurance for self-funded pharmacy benefits.

## **CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS**

The committee established April 1, 2020, as the deadline for submission of retirement, health, and retiree health proposals; however, extended the timeline for bill drafts recommended by Legislative Management interim committees. The deadline is intended to provide the committee and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed legislators and those agencies entitled to the bill introduction privilege to submit proposals for consideration. The committee recognized the committee retains the authority to waive this self-imposed deadline. The committee reviewed each submitted proposal and received testimony from interested persons.

Under Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program. The committee referred the submitted legislative proposals to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. For technical comments, PERS used the actuarial services of Gabriel, Roeder, Smith & Company (GRS) to evaluate proposals that affected retirement programs and the services of Deloitte Consulting, LLP to evaluate proposals that affected the public employees health benefits program. For technical comments, TFFR used the actuarial services of The Segal Group, Inc., in evaluating proposals that affect TFFR.

The committee obtained written actuarial information on each proposal over which the committee took jurisdiction. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators and testimony by interested persons; the impact on the general fund or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to the proposal. Based on these factors, the committee makes a favorable recommendation, unfavorable recommendation, or no recommendation on each proposal.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to each proposal introduced. Each sponsor is responsible for securing introduction of the proposal in the 67<sup>th</sup> Legislative Assembly.

### **Teachers' Fund for Retirement**

The following is a summary of the proposal affecting TFFR over which the committee took jurisdiction, a summary of the actuarial analysis, and the committee's action on the proposal:

#### **Bill No. 233**

**Sponsor:** TFFR

**Proposal:** Provides the age at which TFFR plan participants need to take required minimum distributions is 72.

**Actuarial analysis:** There is no actuarial impact.

**Committee report:** Favorable.

### **Public Employees Retirement System**

The following is a summary of the proposals primarily affecting PERS over which the committee took jurisdiction, a summary of the actuarial analysis, and the committee's action on each proposal:

#### **Bill No. 49**

**Sponsor:** Senator Tim Mathern

**Proposal:** Provides requirements for health insurance policies if the federal Affordable Care Act is repealed.

**Actuarial analysis:** The report provided a section-by-section analysis of the bill draft.

- Cost-sharing limits: No actuarial impact.
- Out-of-pocket limits: These changes will have some actuarial impact; however, the magnitude of the impact would need to be evaluated at the time of the plan change and will depend on the specific out-of-pocket limits that are set and other variables.
- Premium rates: More detail regarding how this reasonability requirement would be evaluated is required before any determination on potential actuarial impact to the PERS plan can be estimated.
- Premium rate factors: No actuarial impact.
- Rating variations: The PERS rate structure would need to be adjusted to comply with this proposed section. This could be accomplished without an aggregate actuarial impact to the plan; however, rates for individual enrollees would change.
- Rating variations: Likely no actuarial impact.

**Committee report:** The committee moved to delay making a recommendation to allow the sponsor the opportunity to revise the bill draft.

#### **Bill No. 55**

**Sponsor:** Representative Mike Schatz

**Proposal:** Provides a health insurance policy that covers an annual physical examination must allow for a physical examination that meets the requirements for a federal Department of Transportation physical examination.

**Actuarial analysis:** The potential cost impact to the uniform group health insurance program would likely be insignificant.

**Committee report:** Favorable.

#### **Bill No. 68**

**Sponsor:** Representative Marvin E. Nelson

**Proposal:** Provides PERS prescription drug benefits coverage must include certain drugs imported from Canada.

**Actuarial analysis:** Little if any potential savings could be realized by the uniform group health insurance program; therefore, unable to quantify an expected actuarial impact to the program.

**Committee report:** No recommendation.



**Bill No. 87**

**Sponsor:** PERS

**Proposal:** Provides for a 1.95 percent increase in the employer contribution for the PERS main and defined contribution retirement plans.

**Actuarial analysis:** The funded ratio of the main plan is projected to reach 100 percent in approximately 2062 and will provide additional retirement income to members of the defined contribution plan.

**Committee report:** No recommendation.

**Bill No. 88**

**Sponsor:** PERS

**Proposal:** Provides for a 2 percent increase in the employer and employee contribution for the PERS main and defined contribution retirement plans.

**Actuarial analysis:** The funded ratio of the main plan is projected to reach 100 percent in 2062 and will provide additional retirement income to members of the defined contribution plan.

**Committee report:** No recommendation.

**Bill No. 89**

**Sponsor:** PERS

**Proposal:** Provides for a 5.12 percent increase in the employer and employee contribution for the PERS main and defined contribution retirement plans.

**Actuarial analysis:** The funded ratio of the main plan is projected to reach 100 percent in 2042 and will provide additional retirement income to members of the defined contribution plan.

**Committee report:** Favorable.

**Bill No. 90**

**Sponsor:** PERS

**Proposal:** Provides for increases in the employer contribution for the Highway Patrolmen's retirement system.

**Actuarial analysis:** The funded ratio of the Highway Patrolmen's retirement system is projected to reach 100 percent in 2107.

**Committee report:** Favorable.

**Bill No. 91**

**Sponsor:** PERS

**Proposal:** Provides for a penalty for late payments or failures to follow required PERS processes.

**Actuarial analysis:** For the retirement plans, since the penalty would be an addition to already established reporting penalties, the impact on administrative costs from an actuarial perspective likely would be de minimis. For the uniform group insurance plans, although late payment fees may have a minor impact on plan reserves, there is no actuarial impact on the health plan itself.

**Committee report:** Favorable.

**Bill No. 92**

**Sponsor:** PERS

**Proposal:** Provides for technical corrections and updates to PERS laws.

**Actuarial analysis:** There is no actuarial impact.

**Committee report:** Favorable.

**Bill No. 93**

**Sponsor:** PERS

**Proposal:** Provides an exception for PERS Medicare Part D pharmacy benefits requirements.

**Actuarial analysis:** Exempting the Part D plan from the transparency requirements may result in the receipt of requests for proposals from more PBMs during a procurement.

**Committee report:** Favorable.

**Bill No. 94**

**Sponsor:** PERS

**Proposal:** Provides for the assessment of administrative expenses for the PERS deferred compensation plan.

**Actuarial analysis:** There is no actuarial impact.

**Committee report:** Favorable.

**Bill No. 95**

**Sponsor:** PERS

**Proposal:** Provides for a 1 percent increase in the employer and employee contribution for the PERS retirement main and defined contribution plans.

**Actuarial analysis:** The funded ratio of the main plan is projected to reach 100 percent in 2065 and will provide additional retirement income to members of the defined contribution plan.

**Committee report:** Favorable.

**Bill No. 135**

**Sponsor:** Representative George Keiser

**Proposal:** Provides for continued eligibility for health benefits following separation from employment in certain circumstances.

**Actuarial analysis:** No analysis received.

**Committee report:** The committee moved to delay making a recommendation to allow the sponsor the opportunity to revise the bill draft.

**Bill No. 148**

**Sponsor:** Representative Jim Kasper

**Proposal:** Provides the Employee Benefits Programs Committee makes contract determinations for PERS uniform group insurance plans.

**Actuarial analysis:** No actuarial impact.

**Committee report:** Unfavorable.

**Bill No. 170**

**Sponsor:** Legislative Management

**Proposal:** Provides PERS broader discretion to purchase stop-loss insurance coverage for a PERS self-insurance health plan.

**Actuarial analysis:** Any specific actuarial impact due to the purchase of stop-loss insurance would need to be evaluated based on variables such as the stop-loss deductible level, contract type, etc.

**Committee report:** Favorable.

**Bill No. 183**

**Sponsor:** Senator Mathern

**Proposal:** Provides maximum out-of-pocket costs for diabetes drugs and supplies for health insurance policies.

**Actuarial analysis:** No analysis received.

**Committee report:** No recommendation until actuarial analysis received.

**Bill No. 202**

**Sponsor:** Representative Lefor

**Proposal:** Provides an increase in the employer contribution for the PERS main retirement plan and provides for a cash infusion to the plan.

**Actuarial analysis:** No analysis received.

**Committee report:** The committee moved to delay making a recommendation to allow the sponsor the opportunity to revise the bill draft.

## ADDITIONAL COMMITTEE RESPONSIBILITIES

### Recruitment and Retention Bonuses

Pursuant to Section 54-06-31, the committee received periodic reports from the OMB Human Resource Management Services Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. During the 2017-19 biennium:

Agency	2017-19 Agency Authorized Full-Time Equivalent Positions	July 1, 2017, to June 30, 2019 (Biennium Total)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Department of Agriculture	73.00					22	\$185,000
Bank of North Dakota	181.50	1	\$3,125			15	78,117
Department of Commerce	66.40					3	10,500
Department of Corrections and Rehabilitation	845.29	3	3,750	15	\$3,000	1	10,000
State Department of Health	364.00	2	8,609			23	144,231
Highway Patrol	204.00			2	1,000		
Department of Human Services	2,162.23	172	488,825			57	418,500
Information Technology Department	344.30	8	19,000			2	19,000
Industrial Commission/ Department of Mineral Resources	110.25					182	685,999
Commission on Legal Counsel for Indigents	40.00					4	23,180
Office of Management and Budget	117.00					6	15,000
Department of Public Instruction	91.75	1	2,000			4	17,500
Retirement and Investment Office	19.00					8	39,696
State Auditor's office	56.00					4	12,000
State Treasurer's office	7.00					1	8,036
Department of Trust Lands	31.00					1	6,600
Department of Veterans' Affairs	7.00					2	7,649
<b>Total</b>		<b>187</b>	<b>\$525,309</b>	<b>17</b>	<b>\$4,000</b>	<b>335</b>	<b>\$1,681,008</b>

For the 1<sup>st</sup> year of the 2019-21 biennium:

Agency	2019-21 Agency Authorized Full-Time Equivalent Positions	July 1, 2019, to June 30, 2020 (1 Fiscal Year)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Bank of North Dakota	181.50					11	\$91,443
Department of Corrections and Rehabilitation	899.79	26	\$27,250	16	\$6,550	1	4,126
Department of Environmental Quality	165.50	2	12,500			10	64,250
Department of Financial Institutions	31.00					5	30,157
Governor's office	18.00	1	1,000				
Highway Patrol	197.00	8	20,000				
Department of Human Services	2,230.23	101	378,808			12	84,138
Industrial Commission/ Department of Mineral Resources	112.25					93	358,371
Information Technology Department	402.00	10	20,500			77	183,209
Insurance Department	41.00					2	5,500
Commission on Legal Counsel for Indigents	40.00					1	(3,920)
Office of Management and Budget	112.00					1	(2,083)
Parks and Recreation Department	61.50	1	5,000				
Retirement and Investment Office	20.00	1	5,000				
State Auditor's office	58.00					7	17,400
Department of Trust Lands	28.00					1	(3,850)
Workforce Safety and Insurance	260.14	2	4,596	4	2,000		
<b>Total</b>		<b>152</b>	<b>\$474,654</b>	<b>20</b>	<b>\$8,550</b>	<b>221</b>	<b>\$828,741</b>

### Service Awards, Tuition, and Professional Organizations

In accordance with Sections 54-06-32, 54-06-33, and 54-06-34, the OMB Human Resource Management Services Division reported for the 2017-19 biennium, state employee service awards totaled \$483,917.73; employer-paid costs of training or educational courses, including tuition and fees, totaled \$6,461,975.90; and employer-paid professional organization membership and service club dues for individuals totaled \$1,352,073.54. The following schedule is a summary of the information presented for the 2017-19 biennium:

Agency	2017-19 Authorized Full-Time Equivalent Positions	State Employee Service Awards	Employer-Paid Costs of Training or Educational Courses, Including Tuition and Fees	Employer-Paid Professional Organizational Membership and Service Club Dues for Individuals
10100 Governor's office	18.00		\$1,319.00	\$760.00
10800 Secretary of State	32.00	\$1,950.00	1,206.74	11,900.00
11000 Office of Management and Budget	117.00	9,547.87	11,477.30	7,244.03
11200 Information Technology Department	344.30	31,532.80	461,246.10	65,970.50
11700 State Auditor's office	56.00	5,172.00	17,320.91	6,033.00
12000 State Treasurer	7.00	125.00	880.52	5,526.65
12500 Attorney General	237.00			30,128.00
12700 Tax Department	133.00	10,254.50	47,414.40	4,925.00
18000 Judicial branch	355.50	18,737.29	121,795.39	334,693.30
18800 Commission on Legal Counsel for Indigents	40.00		2,121.00	18,958.19
19000 Retirement and Investment Office	19.00	1,831.45	30,976.45	13,586.00
19200 Public Employees Retirement System	34.50	3,300.90	17,219.30	22,590.98
20100 Department of Public Instruction	91.75	12,551.59	7,131.81	42,281.75
22600 Department of Trust Lands	31.00	4,068.04	25,392.99	3,440.00
25000 State Library	28.75	1,179.51		19,025.00
25200 School for the Deaf	45.61		791.96	
25300 North Dakota Vision Services - School for the Blind	28.50	206.95	12,104.00	1,380.00
27000 Department of Career and Technical Education	24.50	1,938.67		6,315.00
30100 State Department of Health	364.00	20,594.00	164,462.69	68,477.85
31300 Veterans' Home	120.72	3,350.00	9,391.25	2,010.00
31600 Indian Affairs Commission	4.00		272.64	
32100 Department of Veterans' Affairs	7.00		375.00	
32500 Department of Human Services	2,162.23	110,227.00	406,983.39	83,444.31
36000 Protection and Advocacy Project	27.50	2,691.19		
38000 Job Service North Dakota	181.61	16,927.00	19,256.86	918.00
40100 Insurance Department	46.00	3,814.75	26,648.27	8,513.00
40500 Industrial Commission	110.25	4,551.50	4,125.18	35,000.00
40600 Department of Labor and Human Rights	14.00	954.95	6,305.00	1,438.00
40800 Public Service Commission	45.00	2,859.50	8,170.95	2,797.53
41200 Aeronautics Commission	7.00	25.00		
41300 Department of Financial Institutions	30.00		3,003.32	
41400 Securities Department	9.00		1,000.00	3,280.00
48500 Workforce Safety and Insurance	260.14	20,793.29	275,356.45	70,197.03
50400 Highway Patrol	204.00		536,299.19	25,947.00
53000 Department of Corrections and Rehabilitation	845.29	52,384.81	263,805.90	121,867.96
54000 Adjutant General	234.00	14,884.50	3,454,868.52	26,397.00
60100 Department of Commerce	66.40	3,497.30	10,252.26	1,878.00
60200 Department of Agriculture	73.00	2,931.00	20,721.02	51,115.10
60700 Milk Marketing Board		600.00		
61600 State Seed Department		901.25	1,100.00	2,050.00
67000 North Dakota Racing Commission	2.00	179.95		
70100 State Historical Society	75.00	9,590.69	33,569.10	9,085.00
72000 Game and Fish Department	163.00	15,950.94	7,052.52	152,163.12
75000 Parks and Recreation Department	62.50	8,389.59	8,467.44	32,045.74
77000 State Water Commission	93.00	5,371.00	4,903.88	13,346.00
80100 Department of Transportation	1,047.00	80,051.95	437,187.20	45,345.50
<b>Total</b>		<b>\$483,917.73</b>	<b>\$6,461,975.90</b>	<b>\$1,352,073.54</b>

### Compliance with Federal Law

#### Teachers' Fund for Retirement

The TFFR Board of Trustees reported action by the committee was required under Section 15-39.1-35 to comply with applicable federal requirements as a result of the federal Setting Every Community Up for Retirement Enhancement (SECURE) Act.

The committee received background on the SECURE Act. The Act increases the age at which retirement plan participants need to take required minimum distributions from 70 1/2 to 72. The committee authorized TFFR to amend Section 15-39.1-10 to implement the SECURE Act. In compliance with Section 15-39.1-05.2, TFFR notified the committee of its intent to introduce legislation to comply with the SECURE Act.

**Public Employees Retirement System**

The PERS Board reported action by the committee was not required under Section 54-52.1-08.2, regarding uniform group insurance, to approve terminology adopted by the PERS Board to comply with applicable federal requirements. However, the committee received a report from the PERS Board under Sections 39-03.1-29 and 54-52-23, regarding the retirement system, to approve terminology adopted by the board to comply with federal requirements under the SECURE Act. The committee authorized PERS to amend Sections 39-03.1-11.2 and 54-52-28 to implement the SECURE Act. The Public Employees Retirement System notified the committee of its intent to introduce legislation to comply with the SECURE Act.

**Firefighters Relief Associations**

The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5), which requires the committee to be notified by any firefighters relief association that implements an alternate schedule of monthly service pension benefits for members of the association.

**REPORTS**

**Retirement and Investment Office**

During the interim the committee received periodic reports from the Retirement and Investment Office regarding investments of the State Investment Board. During the fiscal year ending June 30, 2020, the State Investment Board's client investments increased by over \$1.6 billion, to exceed \$16.3 billion.

Preliminary net investment returns for the State Investment Board's largest 5 clients for fiscal year ended June 30, 2020, are as follows:

	<b>Teachers' Fund for Retirement</b>	<b>Public Employees Retirement System</b>	<b>Legacy</b>	<b>Workforce Safety and Insurance</b>	<b>Budget Stabilization</b>
Net returns for 1 year ended December 31, 2019	18.0%	18.0%	18.1%	13.6%	4.7%
Net returns for quarter ended September 30, 2019	0.4%	0.4%	1.0%	1.7%	0.9%
Net returns for quarter ended December 31, 2019	5.6%	5.7%	5.2%	2.6%	0.8%
Net returns for quarter ended March 31, 2020	(12.0%)	(12.1%)	(12.7%)	(6.1%)	(3.6%)
Net returns for quarter ended June 30, 2020	10.8%	10.8%	12.3%	8.1%	4.3%
Preliminary net returns fiscal year ended June 30, 2020	3.4%	3.4%	4.2%	6.0%	2.3%

For the 10 years ending June 30, 2020, the PERS plan earned a net investment return of 8.38 percent, exceeding its performance benchmark of 7.94 percent by 0.44 percent and its long-term expected return assumption of 7.00 percent. For the 10 years ending June 30, 2020, TFFR earned a net investment return of 8.53 percent, exceeding its performance benchmark of 7.90 percent by 0.63 percent and its long-term expected return assumption of 7.25 percent.

In addition, the committee received testimony regarding the effect COVID-19 had on the market and investments. During the 1<sup>st</sup> quarter of 2020, the market experienced the sharpest and fastest equity market decline ever.

**Public Employees Retirement System**

**Health Benefits Request for Proposal**

During the interim, the committee received periodic reports on the status of the PERS health benefits plan. The PERS Board issued a health benefits request for proposal in June 2020; received 14 eligible proposals from five vendors--Blue Cross Blue Shield of North Dakota, Sanford Health Plan, and three PBMs; reviewed technical and financial analyses; interviewed three vendors--Blue Cross Blue Shield of North Dakota, Sanford Health Plan, and Express Scripts; and on October 19, 2020, voted to award a fully insured hybrid contract to Sanford Health Plan. The proposed contract will provide for bundled medical and pharmacy benefits with a profit-sharing provision, will continue with the current plan design, and will provide for a .1 percent increase in premium.

The committee received testimony the bid for fully insured medical and self-insured pharmacy benefits was \$30 million more expensive than the selected bid, and the bid for self-insured medical and pharmacy benefits was \$90 million more expensive than the selected bid.

## Experience Study

Under Section 54-52-04(4), PERS conducts an actuarial experience study once every 5 years which addresses mortality, retirement, employment turnover, and other items required by the PERS Board and recommends actuarial tables for use in valuation and in calculating actuarial equivalent values based on such investigation. According to testimony from the PERS Board, the board, at its April 15, 2020, meeting, adopted the following 10 recommendations of the experience study conducted by GRS for the period July 1, 2014, to July 1, 2019:

1. Decrease the price inflation from 2.50 to 2.25 percent, bringing the assumption closer to recent inflation levels and to levels expected in the financial markets.
2. Decrease the investment return for PERS main and Highway Patrolmen's retirement system from 7.5 to 7.0 percent, as the probability of exceeding 7.5 percent over the next 20 years is approximately 37.0 percent and the probability of exceeding 7.0 percent over the next 20 years improves to approximately 44.00 percent.
3. Decrease the investment return of the RHIC plan from 7.25 to 6.50 percent, as the probability of exceeding 7.25 percent over the next 20 years is approximately 31.00 percent and the probability of exceeding 6.50 percent over the next 20 years improves to approximately 42.00 percent. Not factored into this analysis is the current market and that the RHIC was closed to new hires after December 31, 2019.
4. Decrease the investment return of the Job Service plan from 4.75 to 4.25 percent, as the probability of exceeding 4.75 percent over the next 20 years is approximately 39.00 percent and the probability of exceeding 4.25 percent over the next 20 years improves to approximately 54.00 percent. The Job Service plan is funded at 150.00 percent.
5. Decrease the wage growth assumption from 3.75 to 3.50 percent and for judges' retirement system to decrease from 3.25 to 3.00 percent.
6. Decrease salary increase assumptions for all plans as observed salary increases during the past 5 years were lower than predicted by current assumptions.
7. Recommend separate rates for retirement based on whether a member meets the rule of 90, 85, or 80. For all plans except the Highway Patrolmen's retirement system, recommend an overall decrease in retirement rates to reflect observed experience; and for the Highway Patrolmen's retirement system, recommend an overall increase in retirement rates to reflect observed experience.
8. Recommend an overall increase in turnover rates to reflect observed experience as turnover rates are based on both age and service, with higher turnover rates during the first 5 years of service.
9. Recommend decreasing the current rates for disability to reflect observed experience as the actual number of disabilities during the past 5 years was lower than predicted by current assumptions.
10. Recommend changing from the RP-2000 Mortality Tables to the newly issued Pub-2010 Public Retirement Plans Mortality Tables with rates projected from 2010 using projection scale MP-2019. For postretirement mortality rates:
  - a. Male proposed rates:
    - (1) Higher for ages under 65; and
    - (2) Lower for ages 65 and up;
  - b. Female proposed rates:
    - (1) Higher for ages under 65 and over 80; and
    - (2) Lower for ages 65 to 80.

It was noted that the new tables are based entirely on public employees.

Additionally, GRS proposed and the PERS Board adopted the following methodology assumption for RHIC participation:

- Incorporate participation rates for current active members--current assumption is 100 percent;
- Incorporate participation rates for retired members eligible but not currently receiving RHIC benefits--current assumption is 100 percent; and
- Include liabilities for current terminated vested members and use same participation assumptions as those used for active members.

Finally, GRS proposed and the PERS Board adopted the continued use of the actuarial cost method, amortization method, asset smoothing method, administrative expense assumption, percent married assumption, form of payment

assumptions, and pay increase timing assumption and changing the assumption that retirements occur at the beginning of the year to the middle of the year.

The experience study report indicated the changes in assumptions would have the following impact on each of the funds in the PERS retirement system:

	Main System	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$4,136,253	\$4,317,882
Actuarial value of assets (\$000's)	\$2,949,967	\$2,949,967
Unfunded actuarial accrued liability (\$000's)	\$1,186,286	\$1,367,915
Funded ratio	71.30%	68.30%
Contributions (percent of pay)		
Statutory contribution rate	14.12%	14.12%
Actuarial contribution rate	19.22%	20.03%
Statutory rate excess/deficiency	(5.10%)	(5.91%)
Amortization period from statutory rate (years)	Infinite	Infinite

	Judges	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$44,559	\$48,695
Actuarial value of assets (\$000's)	\$55,189	\$55,189
Unfunded actuarial accrued liability (\$000's)	(\$10,630)	(\$6,494)
Funded ratio	123.90%	113.30%
Contributions (percent of pay)		
Statutory contribution rate	25.52%	25.52%
Actuarial contribution rate	10.83%	17.15%
Statutory rate excess/deficiency	14.69%	8.37%
Amortization period from statutory rate (years)	None	None

	Public Safety with Prior Main System Service	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$79,501	\$86,617
Actuarial value of assets (\$000's)	\$66,813	\$66,813
Unfunded actuarial accrued liability (\$000's)	\$12,688	\$19,804
Funded ratio	84.00%	77.10%
Contributions (percent of pay)		
Statutory contribution rate	15.35%	15.35%
Actuarial contribution rate	13.54%	15.21%
Statutory rate excess/deficiency	1.81%	0.14%
Amortization period from statutory rate (years)	8.5	18.6

	Public Safety without Prior Main System Service	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$9,027	\$9,776
Actuarial value of assets (\$000's)	\$9,913	\$9,913
Unfunded actuarial accrued liability (\$000's)	(\$886)	(\$137)
Funded ratio	109.80%	101.40%
Contributions (percent of pay)		
Statutory contribution rate	13.43%	13.43%
Actuarial contribution rate	11.87%	13.49%
Statutory rate excess/deficiency	1.56%	(0.06%)
Amortization period from statutory rate (years)	None	None

	Highway Patrol	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$106,315	\$113,171
Actuarial value of assets (\$000's)	\$80,902	\$80,902
Unfunded actuarial accrued liability (\$000's)	\$25,413	\$32,269
Funded ratio	76.10%	71.50%
Contributions (percent of pay)		
Statutory contribution rate	33.00%	33.00%
Actuarial contribution rate	42.68%	47.72%
Statutory rate excess/deficiency	(9.68%)	(14.72%)
Amortization period from statutory rate (years)	Infinite	Infinite

	Job Service	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$66,300	\$67,104
Actuarial value of assets (\$000's)	\$97,808	\$97,808
Unfunded actuarial accrued liability (\$000's)	(\$31,509)	(\$30,704)
Funded ratio	147.50%	145.80%
Contributions (percent of pay)		
Statutory contribution rate	7.00%	7.00%
Actuarial contribution rate	NA	NA
Statutory rate excess/deficiency	NA	NA
Amortization period from statutory rate (years)	None	None

	Retiree Health Insurance Credit	
	Current Assumptions	Proposed Assumptions
Actuarial accrued liability (\$000's)	\$217,831	\$221,295
Actuarial value of assets (\$000's)	\$137,602	\$137,602
Unfunded actuarial accrued liability (\$000's)	\$80,229	\$83,693
Funded ratio	63.20%	62.20%
Contributions (percent of pay)		
Statutory contribution rate	1.14%	1.14%
Actuarial contribution rate	1.02%	1.14%
Statutory rate excess/deficiency	0.12%	0.00%
Amortization period from statutory rate (years)	15	20

### PERS Main System Funding

The committee received testimony regarding the PERS main system funding history and potential options to reduce the main system unfunded liability. The following schedule shows the actuarial assets and liabilities of the PERS main system defined benefit plan since 2000:

Fiscal Year	Actuarial Assets	Actuarial Liabilities	Actuarial Surplus or (Unfunded Liability)	Actuarial Funded Ratio
2000	\$1,009,744,796	\$879,189,877	\$130,554,919	114.8%
2001	\$1,096,115,648	\$993,851,809	\$102,263,839	110.3%
2002	\$1,129,697,099	\$1,087,003,336	\$42,693,763	103.9%
2003	\$1,145,284,302	\$1,170,477,887	(\$25,193,585)	97.8%
2004	\$1,172,258,036	\$1,250,849,240	(\$78,591,204)	93.7%
2005	\$1,210,287,848	\$1,333,491,341	(\$123,203,493)	90.8%
2006	\$1,286,478,642	\$1,450,113,412	(\$163,634,770)	88.7%
2007	\$1,470,367,098	\$1,575,666,628	(\$105,299,530)	93.3%
2008	\$1,571,159,912	\$1,700,171,588	(\$129,011,676)	92.4%
2009	\$1,577,552,012	\$1,861,032,305	(\$283,480,293)	84.8%
2010	\$1,576,794,397	\$2,156,560,553	(\$579,766,156)	73.1%
2011	\$1,603,718,656	\$2,284,199,019	(\$680,480,363)	70.2%
2012	\$1,579,933,179	\$2,442,299,210	(\$862,366,031)	64.7%
2013	\$1,632,915,720	\$2,650,525,018	(\$1,017,609,298)	61.6%
2014	\$1,837,902,845	\$2,866,511,290	(\$1,028,608,445)	64.1%
2015	\$2,027,476,214	\$2,976,071,808	(\$948,595,594)	68.1%
2016	\$2,180,748,616	\$3,299,381,100	(\$1,118,632,484)	66.1%
2017	\$2,529,631,008	\$3,618,083,973	(\$1,088,452,965)	69.9%
2018	\$2,752,053,305	\$3,841,701,179	(\$1,089,647,874)	71.6%
2019	\$2,949,967,049	\$4,136,252,987	(\$1,186,285,938)	71.3%

The committee received the following preliminary estimates on the effects of providing ongoing transfers to the PERS main system each biennium to reduce the unfunded liability:

Biennial Transfer Amount	Estimated Time to Become 100 Percent Funded		Estimated Total State Funds Transferred
	Bienniums	Years	
\$10 million	20	40	\$200 million
\$20 million	16	31	\$320 million
\$25 million	14	28	\$350 million
\$30 million	13	26	\$390 million
\$40 million	12	23	\$480 million
\$50 million	10	20	\$500 million
\$75 million	8	16	\$600 million
\$100 million	7	13	\$700 million

The committee received updated estimates indicating a one-time cash infusion of \$1 billion would result in a PERS main system projected funding ratio of 100 percent within 20 years, and a one-time cash infusion of \$775 million would



result in full funding within 30 years. Possible funding sources identified to address the PERS main system shortfall included the general fund, budget stabilization fund, legacy fund, and strategic investment and improvements fund.

# ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

The Energy Development and Transmission Committee was created in 2007 and was made permanent in 2011. Under North Dakota Century Code Section 54-35-18, the committee is directed to study the impact of a comprehensive energy policy for the state. The study may include reviewing and recommending policies related to extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.

The committee is responsible for receiving various reports, as assigned by the Legislative Management, including:

- An annual report from the State Energy Research Center regarding its research activities and accomplishments. (Section 15-11-40)
- A biennial report from the North Dakota Transmission Authority regarding its activities. (Section 17-05-13)
- A biennial report from the Energy Policy Commission regarding recommendations for a comprehensive energy policy. (Section 17-07-01)
- A report, beginning December 2014 and every 4 consecutive years thereafter, on the amount of money in the carbon dioxide storage facility trust fund and on the amount of fees needed to satisfy the fund's objectives. (Section 38-22-15) The next report is scheduled to be received in December 2022.
- A biennial report from the High-Level Radioactive Waste Advisory Council regarding its findings (Section 38-23-08)
- A biennial report from the North Dakota Pipeline Authority regarding its activities. (Section 54-17.7-13)
- A report from a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a tax credit. (Section 57-60-02.1) The committee did not receive a report because there are currently no eligible coal conversion facilities receiving a credit; therefore, no report is required.
- Status reports during the 2019-20 interim report from the Industrial Commission, through its study contractor, regarding the status of the Industrial Commission's study on recycling produced water in oil and gas operations and receive a final report on the study by October 1, 2020 (2019 House Bill No. 1014, § 19).
- A report from the Energy and Environmental Research Center regarding the results and recommendations of the underground gas storage pilot project (2019 House Bill No. 1014, § 25).

Committee members were Senators Rich Wardner (Chairman), Brad Bekkedahl, Kathy Hogan, Ray Holmberg, Merrill Piepkorn, and David S. Rust and Representatives Dick Anderson, Tracy Boe, Mike Brandenburg, Alisa Mitskog, Todd Porter, and Don Vigesaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## COMPREHENSIVE ENERGY STUDY

The committee is responsible for studying a comprehensive energy policy for the state. As part of this study, the committee received a report from the Energy Policy Commission, also known as the EmPower ND Commission.

### Energy Policy Commission

In 2009 the Energy Policy Commission was created by Section 17-07-01 to develop a comprehensive energy policy and to monitor progress toward reaching the goals of the policy. The commission consists of the Commissioner of Commerce as Chairman and members appointed by the Governor to represent the agricultural community, Lignite Energy Council, North Dakota Petroleum Council, biodiesel industry, biomass industry, wind industry, ethanol industry, North Dakota Petroleum Marketers Association, North Dakota investor-owned electric utility industry, generation and transmission electric cooperative industry, lignite coal-producing industry, refining or gas-processing industry, and additional nonvoting members.

The committee received a report from the Energy Policy Commission regarding policy recommendations. The commission's recommendations relate to infrastructure, research and development, and the regulatory environment.

#### Infrastructure:

- Source private equity and developing infrastructure to support expansion.
- Continue support for key infrastructure for energy and community development throughout the state.
- Improve North Dakota's transmission capacity by working with the Southwest Power Pool and Midcontinent Independent System Operator to ensure new electricity generation within the state has a place to go.
- Invest significant capital into a petrochemical complex and support incentives to encourage petrochemical industrial development.
- Support the future of the DC transmission line from Coal Creek Station to Minnesota by minimizing the barriers preventing full use of the line for a combination of conventional generation, carbon-free generation, renewable generation, and electrical storage.
- Continue supporting and pursuing installation of carbon capture systems on North Dakota generation facilities.
- Find another entity to take ownership and continue to operate Coal Creek Station.

#### Research and development:

- Encourage private equity and awareness to biomass and biomass opportunities.
- Continue to appropriately fund the Commerce Department with the objective of continuing a robust recruitment approach for biomass.
- Utilize carbon credits in conjunction with carbon capture and storage technologies to make them more economically viable.
- Continued investment in carbon capture utilization and storage enhanced oil recovery and lignite as well as research councils.

#### Regulatory environment:

- Modify and strengthen the sales and use tax exemption for enterprise information technology equipment and computer software used in a qualified data center by extending the program until 2030, removing the four data center limit, and allowing a qualified data center to be a minimum of 15 thousand square feet to qualify.
- Add "qualified data center" as an eligible recipient of property tax abatement for up to 10 years to increase visibility to data center developers with the goal of attaining a mega data center in North Dakota.
- Continue to work with the Southwest Power Pool and Midcontinent Independent System Operator to ensure the power produced can be transmitted and sold.
- Encourage federal agencies to work with state agencies when developing regulations.
- Improve regulatory friendliness and technology use to promote safety and more effectively support industry.
- Encourage the federal delegation from North Dakota to enhance the 45Q tax credit legislation to provide certainty that is required to develop a successful carbon capture business within North Dakota plants.

### **Recommendation**

The committee makes no recommendation regarding the comprehensive energy study.

### **NORTH DAKOTA TRANSMISSION AUTHORITY REPORT**

The committee received a report from the North Dakota Transmission Authority pursuant to Section 17-05-13. According to the report, the North Dakota Transmission Authority commissioned Barr Engineering to conduct a Power Forecast 2019 to estimate the energy growth over the next 20 years. The Power Forecast 2019 projects an increase of 71 percent in energy demand over the next 20 years under the consensus scenario. The load factors have been in excess of 90 percent, which is expected to continue with the rising demand. Utilities will be tasked with meeting both the capacity and energy requirements associated with that growth.

According to the report, the electric transmission system in North Dakota is operating well and serving the load reliably with the current generation. However, transmission congestion is increasing and in parallel with that, the wholesale prices are more volatile. The increased retail demand in North Dakota has contributed to the good operation of the grid. The events of 2020 resulted in demand destruction both in the Bakken area and the surrounding markets. The uncertainty created by the potential closure of Coal Creek Station and the resulting uncertainty of the future of the DC transmission

line associated with the plant has raised the stakes for long-term planning of transmission capacity for North Dakota as a method of keeping the generation of both lignite-based electricity and renewable generation robust.

The report included an overview of the North Dakota Transmission Authority's 2018-19 activities. According to the report, the North Dakota Transmission Authority intends to update the power demand forecast for the Bakken region, review the generation interconnect requests that have been processed recently for connection to the transmission grid, prepare its annual report, support the Department of Commerce on potential development, and continue its contact with stakeholders in all aspects of the generation and transmission in North Dakota and surrounding states.

### **NORTH DAKOTA PIPELINE AUTHORITY REPORT**

The committee received multiple updates from a representative of the North Dakota Pipeline Authority on oil and gas pipelines in the state. As of March 2020, 69 percent of the oil produced in North Dakota is exported out of the state by pipeline, while 19 percent is exported to Canada by truck or rail. Eighty-seven percent of gas is captured and sold, while four percent of gas is flared from zero sales wells because of the lack of pipelines. The remaining nine percent is flared from wells with at least one thousand cubic feet (Mcf) sold because of challenges on existing infrastructure.

The North Bakken Expansion Project would provide 200 million cubic feet of natural gas transportation capacity per day. In addition, the project would provide approximately 67 miles of new pipeline construction, compression, and ancillary facilities to transport natural gas from core Bakken production areas in western North Dakota to an interconnection point with Northern Border Pipeline. The project is expected to: be completed in 2021, cost \$220 million, be designed using 20-inch diameter pipeline, and provide residue gas service from north of Lake Sakakawea to Northern Border Pipeline in McKenzie County.

According to the report, natural gas produced from the Bakken and Three Forks Formations is very high in natural gas liquids such as ethane, propane, and butane. It is expected natural gas liquid production will exceed pipeline capacity again in 2021 until further system expansions take place or a new market option is developed. During the 2019-20 fiscal year, the North Dakota Pipeline Authority will be commissioning a study of the expected natural gas liquid chemistry changes from a typical Bakken and Three Forks well over its productive life. The research will be used by the North Dakota Pipeline Authority and industry participants to improve natural gas liquid forecasting capabilities and support future decisions to enhance gas capture in North Dakota. The North Dakota Pipeline Authority will continue to utilize new and existing development information to gain a deeper understanding of the crude oil, natural gas, natural gas liquids, and carbon dioxide pipeline needs in the Williston Basin.

### **HIGH-LEVEL RADIOACTIVE WASTE ADVISORY COUNCIL REPORT**

The committee received a report from the High-Level Radioactive Waste Advisory Council pursuant to Section 38-23-08. According to the report, the High-Level Radioactive Waste Advisory Council was created on July 1, 2019, via the enactment of Senate Bill No. 2037 (2019) and is responsible for:

- Reviewing high-level radioactive waste site suitability;
- Issuing reports for proposed high-level radioactive waste facilities to the Legislative Assembly or Industrial Commission;
- Reviewing and making recommendations to the Industrial Commission regarding administrative rules and standards relating to high-level radioactive waste and the duties of the Industrial Commission; and
- Making recommendations to the Industrial Commission regarding the administration of Chapter 38-23.

According to the report, since its creation on July 1, 2019, the High-Level Radioactive Waste Advisory Council reviewed the high-level radioactive waste issues in North Dakota, including the proposed deep test hole in Pierce County in late 2015 and early 2016, the Department of Environmental Quality's radiation safety program, North Dakota's low-level waste compacts, North Dakota's high-level radioactive waste statutes that had been in effect from 1979 to 2019, and the federal Nuclear Waste Policy Act of 1982. The committee was informed the High-Level Radioactive Waste Advisory Council's proposed administrative rules were adopted on October 1, 2020.

### **STATE ENERGY RESEARCH CENTER REPORT**

The committee received a report from a representative of the State Energy Research Center pursuant to Section 15-11-40. According to the report, the State Energy Research Center receives \$5 million per biennium to conduct exploratory, transformational, and innovative research that advances future energy opportunities to benefit North Dakota's economy and environment. The Energy and Environmental Research Center researchers submitted 26 research proposals for consideration, each of which went through a rigorous review process. Each proposal included a scope of work, timeline, and budget. The review teams scored, discussed, and debated the benefits and drawbacks of each project and how well the project would fit within the goals of the State Energy Research Center. The projects

selected include rare earth elements, energy storage, and electromagnetic pulses that could disrupt electrical transmission on the grid. The goal of the research projects is not only to produce more energy using North Dakota's fossil and alternative resources, but also do it in an efficient, cost-effective, and environmentally friendly manner. The goal is the technology developed under the State Energy Research Center can be used in North Dakota now and 10 to 15 years in the future.

The research projects approved for State Energy Research Center funding are:

- Critical minerals assessment of North Dakota shales.
- Evaluation of high-value solid carbon products from North Dakota coal and gas resources.
- Power production and distribution resilience to electromagnetic pulses.
- Identification of the most efficient and least cost process for conversion of wellhead gas to transportable liquid products.
- Evaluation of energy storage technologies and the benefit to North Dakota utilities.
- Solvent extraction of rare earth elements from lignite coal in situ.
- Waste utilization for bio-based alternatives to chemicals and fuels.
- Crude oil swelling with injected rich gas and carbon dioxide as a potential mechanism for enhanced oil recovery in the Bakken.
- Enhancing reservoir productivity through a new hydraulic fracturing approach.
- Bench-scale extraction of rare earth elements from lignite coal ash.

According to the report, the projects and research have economic, social, and environmental research objectives including assuring affordable and reliable energy, maintaining and expanding jobs, maintaining a healthy environment, and maintaining and growing state, tribal, and local tax revenues. One hundred percent of all funding has been allocated this biennium, and there have been six new invention disclosures achieved in the 2020 fiscal year.

## **ENERGY AND ENVIRONMENTAL RESEARCH CENTER REPORT**

The committee received a report from a representative of the Energy and Environmental Research Center regarding the results and recommendations of the underground gas storage pilot project pursuant to Section 25 of House Bill No. 1014 (2019). According to the report, subsurface injection of excess produced gas could be a mechanism to meet gas capture requirements and decrease flaring, reduce curtailed oil production, and facilitate sustained growth in oil production. Establishing gas storage infrastructure also could facilitate enhanced oil recovery and petrochemical investment. The potential gas injection scenarios are gas storage into saline or salt formations for future recovery and use or injection into conventional or unconventional hydrocarbon reservoirs for pressure maintenance.

With funding from the Industrial Commission, the Energy Environmental Research Center performed a higher-level assessment in late 2018 to evaluate and simulate produced gas injection into the subsurface with focused examination of the Broom Creek Formation. According to the report, the Broom Creek Formation may be a technically and economically viable target for temporary produced gas storage in the southern portion of the core Bakken area. Gas recovery factors from temporary storage range from 47 to 63 percent in the most realistic scenarios, which include constrained rates of gas production or reuse of the same storage reservoir to facilitate additional well development.

According to the report, the goal for the Energy and Environmental Research Center is to partner with North Dakota oilfield producers on up to three pilot projects to define and assess the key technical, economic, and regulatory components of produced natural gas injection into geologic targets in the Williston Basin. The expected outcome of the pilot projects would be learning the key information needed for the state, the oil and gas industry, and other interested parties to assess the techno-economic viability of produced gas storage or injection into the subsurface as a means of achieving gas capture requirements, expanding Bakken oil production, and conserving the state's resources. The Energy and Environmental Research Center recommended the Legislative Assembly consider implementing a statutory provision allowing a gas tax exemption for gas storage purposes. The tax exemption could be permanent or be due when the gas is extracted from the storage reservoir.

## **INDUSTRIAL COMMISSION REPORT**

The committee received a report from a representative of the Energy and Environmental Research Center regarding the Industrial Commission's study on recycling produced water in oil and gas operations pursuant to Section 19 of House Bill No. 1014 (2019). According to the report, the Energy and Environmental Research Center was awarded the contract by the Industrial Commission's Oil and Gas Research Program to conduct the study on the recycling of water used in oil

and gas operations, also known as produced water, from oil and gas producing regions of North Dakota. The report provided a compilation of results of the study including regulatory, scientific, technological, and feasibility methods and considerations associated with North Dakota produced water management. The report also provided an assessment of North Dakota produced water management practices and trends and discusses associated opportunities, challenges, and industry perspectives aggregated from top producers and service companies operating in the Williston Basin.

According to the report, water management is a significant technical and economic challenge for sustainable oil and gas production, and water volumes are linked intrinsically to oil production volumes. North Dakota oil production rose to over 1.5 million barrels per day in 2019, and despite a downturn in oil price, North Dakota oil production has recovered to over 1 million barrels per day as of July 2020. Bakken petroleum system development between 2008 and 2019 has resulted in a nearly fourfold increase in produced water volumes to 740 million barrels per year and a fivefold increase in saltwater disposal volumes to 683.5 million barrels per year. Produced water and saltwater disposal volumes are forecast to double by 2030.

Saltwater disposal is the primary method of produced water management used in North Dakota, with approximately 95 percent of the saltwater disposal volume occurring through injection into sandstones of the Dakota Group. Produced water recycling was not found to be occurring in North Dakota, with the exception of the reinjection of coproduced water associated with secondary waterflood recovery in select conventional fields. While there has been limited prior technical success using produced water as hydraulic fracture makeup water dating back to 2015, commercial adoption has been precluded by regulatory, logistical, and economic challenges.

Localized pressurization of the Dakota Group resulting from saltwater disposal and projected increases in produced water volumes could impact the economics of North Dakota oil production. As a result, there is an emerging need to pursue alternative produced water management approaches, including recycling and reuse. Investing resources to pursue recycling or reuse options and other solutions to address emerging produced water management challenges now could help curtail and defer operational and cost impacts of produced water management on the economics of North Dakota oil production in the future. Several options include characterization of alternative saltwater disposal targets, integrated produced water pipeline systems to transport produced water to more suitable saltwater disposal locations, surface storage alternatives that reduce risk for recycling, and novel approaches to implementing recycling and reuse in North Dakota.

## **OTHER**

### **Wind Energy Conversion Facilities**

The committee received information from the Public Service Commission regarding a status update on wind energy conversion facility siting. There are 3,153 megawatts (MW) in operation in North Dakota. So far, an additional 600 MW have been approved and are under construction but not yet in operation while 988 MW have received permits but have yet to begin construction. The Public Service Commission received 34 decommissioning plan requests. The average cost to decommission a turbine is \$156,974.

The committee learned that turbine projects have raised public concerns from nonparticipating landowners including concerns relating to noise, shadow flicker, and impact on land values.

### **Oil and Gas Update**

The committee received information from the Department of Mineral Resources regarding gas capture and enhanced oil recovery. As of August 2019, North Dakota produces 1,477,394 barrels of oil per and 3,013,014 Mcf per day, and has 15,942 producing wells. By 2040, these numbers are projected to be 2 million barrels per day and 5.5 million Mcf per day; and 65,000 producing wells.

### **Gas Innovations**

Crusoe Energy Systems Inc. provided information to the committee regarding digital flare mitigation. Crusoe helps operators maintain and increase oil production by solving the regulatory and environmental challenges of associated gas by converting "stranded" natural gas into electricity for energy-intensive computing on the well site. The committee was informed digital flare mitigation solves critical regulatory challenges for oil and gas companies by achieving beneficial use and reducing emissions and the digital flare mitigation system is a mobile and modular assembly of power generation, computing, and remote telecommunications systems optimized specifically for stranded gas resources.

### **Great River Energy**

Great River Energy provided information to the committee regarding its Coal Creek Station. The committee was informed Great River Energy is facing economic challenges at Coal Creek Station and is reviewing the generation and transmission portfolio continually to provide reliable and competitively priced electricity to Great River Energy's 28-member cooperatives based in Minnesota. Great River Energy is conducting an analysis of the economic conditions experienced by Coal Creek Station and assessing available possibilities to address the challenges. According to the

testimony, persistent low market prices since 2008 are having a nationwide impact on the coal fleet and neither Great River Energy nor North Dakota has been immune to the impact.

### **Ethanol Industry**

The North Dakota Ethanol Council and Dakota Ethanol Producers Association provided information to the committee regarding the importance and status of the ethanol industry in North Dakota. The committee was informed the North Dakota ethanol industry:

- Employs more than 270 workers directly and thousands indirectly.
- Has an annual economic impact of more than an \$623 million.
- Has a capacity of 550 million gallons per year.
- Produces 2.8 gallons of ethanol, 18 pounds of livestock feed, 18 pounds of carbon dioxide, and 0.5 pounds of crude corn oil for every bushel of corn processed.

The committee was informed while ethanol production provides clean, renewable, high octane option for refiners, reasonably priced fuel for consumers, and high-quality feed for livestock producers, there are challenges. Testimony indicated fuel prices have plummeted, fuel demand has been cut in half, and farmers and ethanol plants are losing money. Fifty percent of ethanol plants across the country have ceased production and margins are negative even though North Dakota ethanol plants continue operations.

### **Technologically Enhanced Naturally Occurring Radioactive Material Disposal**

The committee received information from AE2S Nexus regarding the disposal of technologically enhanced naturally occurring radioactive material (TENORM). When crude oil is extracted, natural biproducts are brought to the surface with it including radioactive substances that can be found in nature like soils, rocks, and water. Technologically enhanced naturally occurring radioactive materials are found in various materials as part of the oil and gas extraction and production, including drill cuttings, wastewater, tank sludge, pipe scale, and disposable socks filters during oil extraction and production.

North Dakota does not have any landfills approved for TENORM and an average of 92,000 tons is transported out of the state per year. The information indicated 89.7 percent of North Dakota TENORM is hauled to Montana for disposal. AE2S Nexus recommended reducing dependency of neighboring states for waste produced in North Dakota by selecting the optimal location to safely dispose of TENORM in North Dakota and acknowledging an average maximum limit, ensuring appropriate bonding of the solid waste landfills, and ensuring financial guarantee levels are adequate, including any county responsibilities in the calculation of the financial guarantee.

### **Biological Remediation Methods for Oil Spills**

Targa Resources provided information to the committee regarding landfarming hydrocarbon impacted soil. The committee was informed landfarming, or "bioremediation," is the use of living microorganisms to degrade environmental contaminants in the soil into less toxic or nontoxic materials. The microorganisms can be indigenous or bioaugmented commercial bacterial mixtures. Bacteria feed on organic waste and derive nutrition for growth and reproduction. Using landfarming speeds up the process by increasing the rate of bacterial metabolism and growth. At the conclusion of the landfarm process, hydrocarbons in the soil will be reduced to a level that will not pose a threat to the environment. The treated soils can be beneficially reused instead of occupying space in a landfill. Beneficial reuse includes placing the soil into the excavation and seeding with native grass mix or placing the property into crop rotation. According to the information, bioremediation is much more environmentally sustainable, cost-efficient, and time saving than other remediation alternatives. It was asserted federal and state regulations allow biological remediation methods to be used for certain oil spills, but a streamlined regulatory process could reduce remediation costs increasing the feasibility of bioremediation.

Chief Oilfield Services, LLC and Oppenheimer Biotechnology, Inc. also provided information to the committee regarding biological remediation. These companies' general approach to bioremediation consists of bioaugmentation, biostimulation, and natural attenuation. Chief Oilfield Services and Oppenheimer Biotechnology have completed 340 successful soil and ground water remediation projects. According to the information, 58.2 percent of these projects occurred at gas stations while 30.6 percent occurred at agricultural facilities, power plants, construction sites, and oil spill sites.

# GOVERNMENT ADMINISTRATION COMMITTEE

The Government Administration Committee was assigned the following studies:

- Section 10 of House Bill No.1021 (2019) directed a study regarding consolidated emergency and interoperable public safety communications system governance and funding options.
- Section 1 of House Bill No. 1298 (2019) directed a study regarding accessibility of the State Capitol grounds as related to the federal Americans with Disabilities Act of 1990 (ADA). The study was to include the effectiveness of the quantity and location of handicapped accessible parking spaces and the accessibility of entrances to the Capitol in consideration of security concerns. The study was also to include interior considerations including handicapped accessible restrooms with appropriate signage and seating areas on the ground floor of the Capitol.
- Section 35 of Senate Bill No. 2015 (2019) directed a study regarding the feasibility and desirability of developing other allowable revenue-generating uses of the Veterans' Home facilities and grounds in addition to the purposes identified in North Dakota Century Code Section 37-15-02. The study was to include an analysis of potential revenue-generating activities for the Veterans' Home facilities and grounds, including a review of the effect on any federal requirements.
- House Concurrent Resolution No. 3047 (2019) directed a study regarding state and federal veterans' programs, the programs' eligibility requirements, and the efficiency of public or private entities responsible for the administration of state and federal veterans' programs to ensure all current and future North Dakota veterans receive the care, assistance, and benefits to which the veterans are entitled.

The Legislative Management also assigned the committee the responsibility to:

- Receive a report from the Office of Management and Budget (OMB) by October 15 of each even-numbered year, regarding the reports received by OMB from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, of plans to operate the state agency when federal funds are reduced by 5 percent or more of the total federal funds the state agency receives, pursuant to Section 54-27-27.1.
- Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority pursuant to Section 54-40-01.

Committee members were Senators Randy Burckhard (Chairman), Jay Elkin, John Grabinger, Joan Heckaman, Richard Marcellais, Scott Meyer, and Kristin Roers and Representatives Pamela Anderson, Glenn Bosch, Karen Karls, Ben Koppelman, Jon O. Nelson, Austen Schauer, and Cynthia Schreiber-Beck.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## EMERGENCY AND INTEROPERABLE PUBLIC SAFETY COMMUNICATION SYSTEM GOVERNANCE STUDY

### Background

The statewide interoperable radio network (SIRN) is a communication system being developed to allow first responders to serve and protect citizens by connecting various radio systems between state, county, city, and other political subdivision agencies. The major state agencies and organizations working on SIRN include the Division of State Radio in the Department of Emergency Services (DES), the Information Technology Department (ITD), the Statewide Interoperability Executive Committee (SIEC), the Emergency Services Communications Coordinating Committee (ESC3), and the North Dakota Association of Counties (NDACo).

Section 37-17.3-04 provides the director of the Division of State Radio is required to broadcast all dispatches and reports submitted that have a reasonable relation to or connection with the apprehension of criminals, the prevention of crimes, or the maintenance of peace and order in the state, including disaster emergency services. Section 37-17.3-09 allows the Division of State Radio to provide primary public safety answering point (PSAP) services to a political subdivision that has a population of fewer than 25,000 at the time an agreement is signed for services with the division. Chapter 57-40.6 relates to emergency services communications systems and defines a PSAP as a communications facility or combination of facilities which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.



Section 37-17.3-02 provides the chief information officer of ITD is charged with the operation and maintenance of SIRN as directed by SIEC. Section 37-17.3-03 requires each county and city in North Dakota to furnish to its law enforcement, firefighters, and emergency medical personnel the appropriate personal and vehicular radios that can access SIRN. Volunteer emergency personnel are not eligible for reimbursement because they are not employed by a political subdivision. The state cost-share for each radio is \$1,500 unless the cost of the radio is less than \$1,500, in which case the state cost-share is the cost of the radio. The Legislative Assembly has appropriated a total of \$162.4 million to ITD for SIRN since the 2015-17 biennium, as follows:

	2015-17 Biennium	2017-19 Biennium	2019-21 Biennium	Total
General fund	\$1,401,750			\$1,401,750
SIRN fund		\$13,700,000	\$12,330,000	26,030,000
Strategic investment and improvements fund			20,000,000	20,000,000
Bank of North Dakota loan		15,000,000		15,000,000
Bank of North Dakota profits			20,000,000	20,000,000
Bank of North Dakota line of credit			80,000,000	80,000,000
Total	\$1,401,750	\$28,700,000	\$132,330,000	\$162,431,750

Of the \$132.33 million appropriated to ITD for SIRN for the 2019-21 biennium, ITD must spend \$25 million of the \$80 million Bank of North Dakota line of credit before the \$20 million transfer of Bank profits will occur.

### Statewide Interoperability Executive Committee

The committee received testimony from representatives of the SIEC regarding the current SIRN governance, opportunities to improve emergency services communications, future statewide emergency services radio communication coverage as a result of SIRN, the SIEC's role related to SIRN, suggestions regarding the consolidation of SIRN governance and public safety communications, and other committee duties not related to SIRN.

#### Governance

The governance of SIRN consists of the 20-member SIEC, a 12-member SIEC subcommittee, and 4 regional boards. The SIEC includes representatives of state agencies, public safety entities, and legislators. The SIEC is responsible for oversight of public safety interoperable communications, is required to prepare recommendations regarding SIRN, and may adopt rules governing the connection or integration of PSAPs to SIRN. The subcommittee includes 4 state agency representatives, 4 local urban representatives, and 4 local rural representatives. The subcommittee is responsible for management and implementation of public safety interoperable communication policies. Each regional board aligns with emergency management regions and has one representative for each 911 jurisdiction. Each regional board includes a tribal representative and 1 member from each 911 jurisdiction or county in the region. The regional boards are responsible for addressing local and regional interoperability issues while receiving local input to statewide initiatives.

The testimony indicated SIEC has more than 75 volunteers working in 11 workgroups. The workgroups focus on simulcast, public information, fleet mapping, encryption, radio, fire, law enforcement, education and training, security, PSAP users, and emergency medical services and hospitals.

Other duties of SIEC not related to SIRN include broadband services, data interoperability, and establishing a statewide communications interoperability plan.

#### Statewide Interoperable Radio Network Project

The SIEC, Statewide Information Technology Advisory Committee (SITAC), ESC3, and DES have roles in North Dakota emergency services communications. The committee was informed while some emergency services communication duties may be similar between each organization, most duties are unique to each organization and do not conflict with the duties of another organization. The role of SITAC for emergency services communications primarily is related to prioritizing large information technology projects, including SIRN, for state government budgeting purposes.

During the 2011-13 biennium, SIEC conducted a limited study regarding emergency services communications systems. During the 2013-15 biennium, SIEC coordinated funding from various public safety entities to conduct a study of North Dakota mission-critical radio communications systems used by public safety responders and public safety entities. The Statewide Interoperability Executive Committee selected Televate, LLC, to assess the status of mission-critical land mobile radio networks statewide and to develop a strategic plan to combine communications into an expansive network that enhances public safety response statewide.

The SIRN project has two phases:

1. Phase 1 includes the SIRN system core infrastructure and PSAPs. Phase 1 consists of two groups, one for execution and one for planning. Phase 1 will consist of select counties, PSAPs, and local jurisdictions. The

planned completion date for group 1 of Phase 1 is July 2020 and has an estimated cost of \$5.76 million. The planned completion date for group 2 of Phase 1 is October 2020.

2. Phase 2 will focus on radio frequency network construction, has an estimated cost of \$50 million, and will be split into four groups. Group 1 will consist of working on 40 Department of Transportation (DOT) towers and is expected to be completed in June 2022. Group 2 will consist of 5 DOT towers, 16 leased towers, and simulcast towers in Grand Forks, Minot, Williston, Bismarck, and Mandan. Group 2 is expected to be completed in May 2021. Groups 3 and 4 do not have estimated completion dates but will consist of 78 towers.

According to the testimony, SIRN will provide for 95 percent mobile coverage with 95 percent reliability and 85 percent portable coverage with 95 percent reliability. Major highways, the 127 largest North Dakota cities, all county seats, and communities with law enforcement, fire, and emergency medical services will experience increased public safety communications.

### **Emergency Services Communications Coordinating Committee**

The committee received testimony from ESC3 regarding ESC3's role related to SIRN, other ESC3 duties not related to SIRN, suggestions for consolidating PSAPs, and any concerns or challenges related to SIRN and the consolidation of public safety communications.

### **Duties and Responsibilities**

The ESC3 is a statutory committee consisting of four members from the North Dakota 911 Association, NDACo, State Radio, and ITD. The responsibilities of ESC3 include:

- Bring Next Generation 9-1-1 services to North Dakota. Next Generation 9-1-1 is a nationwide initiative to improve 911 services between the public and PSAPs.
- Provide recommendations to the Legislative Management regarding changes to the operating standards for emergency services communications.
- Recommend to the Legislative Assembly the appropriate maximum emergency services communications service fee and develop expenditures guidelines regarding the allowable uses of the fee revenue.
- Initiate and administer statewide agreements among local government units to coordinate the procurement of emergency services communications equipment and services. This function is performed by NDACo through a joint powers agreement.

### **Emergency Services Funding and Public Safety Answering Points**

The committee was informed the main source of funding to provide emergency services communications system services is through the fee levied on telecommunication services. All 53 counties and 1 city impose the fee. As of July 2019, 33 of these jurisdictions charged the maximum fee of \$1.50 per assessed communication service while 20 jurisdictions charged \$1.00. The \$.50 fee on assessed communication services deposited in the SIRN fund is in addition to the \$1.00 or \$1.50 fee.

Of the \$1.00 or \$1.50 per month fee on assessed communication services, 5 cents is retained by telecommunication carriers as an administrative fee, 10 cents is paid to NDACo for statewide contracts, and if the county is in the State Radio jurisdiction, a portion of the fee is remitted to State Radio. After these costs are paid, the remaining revenue collected from the assessed communication service fee is used by the local jurisdiction for operational costs of the PSAP. No state or federal funds have been used for the operations of the 20 local PSAPs.

The three basic features of every PSAP are:

1. The PSAP must have a phone system that will receive 911 calls;
2. Dispatchers must be available to answer the 911 calls; and
3. It must have the ability to dispatch the appropriate public safety agencies, generally using public safety radio systems.

### **Governance**

The committee received testimony indicating ESC3 focuses on implementing new Next Generation 9-1-1 services that will efficiently and cost-effectively deliver 911 calls to a PSAP while SIEC is responsible for developing a statewide integrated public safety radio system like SIRN that PSAPs and all emergency response agencies will utilize for public safety communications. Next Generation 9-1-1 services receive incoming 911 calls and routes the calls to PSAPs. Next Generation 9-1-1 services and SIRN provide information to PSAP dispatchers to relay emergency messages to dispatch responders. The ESC3 and SIEC work together as new technologies are implemented.

The committee was informed ESC3 does not support a merger of ESC3 and SIEC at this time. The Emergency Services Communications Coordinating Committee has been developing Next Generation 9-1-1 services since 2001 while ITD and SIEC received most of the funding necessary for the SIRN project for the 2019-21 biennium. According to the testimony, ESC3 believes SIEC should focus on SIRN before considering a potential merger with ESC3.

A representative of ESC3 expressed the belief any proposal to merge ESC3 and SIEC must be done at the appropriate time, will require changes in governance structure and responsibilities, must not harm the work already achieved by the organizations, and must consider how the newly formed organization will be funded.

## **Other Public Safety Communications Information Received**

### **Information Technology Department**

The committee received testimony from ITD personnel regarding SIRN governance, plans for use of the funding provided for the 2019-21 biennium, and concerns or challenges related to SIRN and the consolidation of public safety communications.

The Legislative Assembly approved House Bill No. 1178 (2017) which established a 50-cent fee on assessed communication services. The revenue generated from this fee is collected by the State Treasurer for deposit in the SIRN fund. Funds available in the SIRN fund will be used for the SIRN system core, network, and State Radio costs, as well as the \$1,500 state cost-share for personal and vehicular radios.

The Information Technology Department awarded the SIRN contract and project to Motorola to provide a single, statewide solution for North Dakota public safety systems. The total estimated project is \$207.1 million and is expected to be a 5-year project. Of the \$207.1 million project total, \$8.5 million is for the SIRN system core and PSAP costs, \$97 million is for the SIRN network such as towers and software, \$100 million is for subscriber devices and radios, and \$1.1 million is for network construction. The estimated operating cost of SIRN is \$5 million to \$10 million annually.

The committee received information indicating ITD and other agencies and organizations have considered SIRN governance and the consensus is the current governance model is the best model to proceed with the project.

### **State Radio**

The committee received testimony from a representative of State Radio regarding SIRN and PSAPs, including the number of PSAPs, suggestions for consolidating PSAPs, and any concerns or challenges related to SIRN and the consolidation of public safety communications.

There are 21 North Dakota PSAPs, including State Radio, which dispatches and answers 911 calls for 25 of the 53 North Dakota counties and several state agencies, including the Highway Patrol, Game and Fish Department, the Attorney General's Bureau of Criminal Investigation, North Dakota Parole and Probation, as well as various federal agencies. The majority of PSAPs only provide public safety communication services for the county in which the PSAP is located. The Red River Regional Dispatch Center in Fargo serves Fargo, West Fargo, and Cass County as well as Moorhead and Clay County, Minnesota. The Lake Region Law Enforcement Center PSAP serves five counties and the PSAPs located in Bottineau, Stanton, and Hillsboro each serve two counties.

The committee was informed local PSAP partners have concerns that PSAPs will be forced to consolidate. State Radio and local partners believe PSAP consolidation should occur only if PSAP operations and emergency communications would benefit from the consolidation, rather than mandating the dissolution of PSAPs. Other than State Radio, all PSAPs are funded from local sources. The testimony suggested as the new radio frequency trunking system is implemented as part of the SIRN project and there are fewer geographic location issues, consolidation of PSAPs may occur at the local level due to cost-savings and available resources.

### **North Dakota Association of Counties**

The committee received testimony from a representative of NDACo regarding concerns or challenges related to SIRN, state and local training needs regarding SIRN, how the \$1,500 state cost-share will affect the number of radios purchased by political subdivisions, and suggestions regarding the consolidation of SIRN and public safety communications governance.

Public safety communications in North Dakota consist of more than 900 public safety organizations, including 114 law enforcement agencies, 175 emergency medical service departments, and 316 fire agencies. The statewide interoperable radio network will include 21 PSAPs, 139 towers, and 20,000 radios.

The committee was informed while the state has contributed substantial funding for the local cost of the SIRN project, local agencies will still have significant costs related to SIRN. Funding provided for SIRN includes:

- \$90 million from the state for core infrastructure and radio frequency network;
- \$30 million from the state for local public safety radio devices;
- \$8.5 million from local agencies for PSAP equipment and training; and
- \$25 million to \$35 million from local agencies for local public safety radio devices.

According to testimony, ITD developed a survey for local agencies to complete to determine how many radios are being used by each local agency, the number of radios each agency will replace, and when each agency will purchase equipment. Local agencies may purchase radios between April 2019 and January 2024, but most agencies likely will purchase radios during the 2021-23 biennium. Local agencies must purchase the radios and submit receipts to the state for reimbursement.

The estimated total number of mobile radios needed is 10,647, of which 9,589 is for local agencies and 1,058 for state agencies. The estimated total number of portable radios needed is 9,290, of which 8,870 is for local agencies and 420 for state agencies. Mobile radios cost between \$2,000 and \$5,400 while portable radios cost between \$1,700 and \$5,400.

The committee was informed by the representative of NDACo local agencies are comfortable with SIRN and public safety communications governance structure. Local agencies recommend delaying any governance changes until SIRN is complete and is operating statewide.

### **Recommendation**

The committee recommends emergency and interoperable public safety communications system governance not be modified from the current governance model until the SIRN project is complete and providing statewide interoperability for public safety communications, at which time additional analysis of governance consolidation may be necessary.

## **ACCESSIBILITY OF THE STATE CAPITOL STUDY**

### **Background**

The ADA is a civil rights law that prohibits discrimination against individuals with disabilities related to jobs, schools, transportation, and all public and private places open to the general public. The purpose of the law is to ensure individuals with disabilities have the same rights and opportunities as individuals without disabilities. The Act is divided into five titles that relate to different areas of public life, most notably for this study Title II - Public Services: State and Local Government.

The Capitol was completed in 1934 and in addition to the tower, includes the 294-foot long legislative wing and 300-foot long judicial wing. Other major buildings on the 132-acre Capitol grounds include the Liberty Memorial Building, State Office Building, Governor's residence, Department of Transportation building, and Heritage Center.

Except as otherwise provided by law, the director of OMB has charge and control of the State Office Building, executive mansion, the Capitol, and the park and public grounds connected to these buildings. The director may adopt rules to promote the health, safety, and general welfare, to prohibit disturbances and disorderly assemblies, to keep the peace, and to regulate nuisances on the Capitol grounds and in any of the buildings located on the Capitol grounds. The rules may include regulation of public assemblies and accessibility to the buildings and grounds, obstructions, fees, insurance, forms, indemnification by users, and waiver of insurance and indemnity requirements by the director.

Chapter 48-10 establishes the Capitol Grounds Planning Commission consisting of nine members, including the Lieutenant Governor as chairman. The governor appoints two citizens, one licensed architect and one representative from the State Historical Society. The President of the Senate appoints two senators as members and the Speaker of the House of Representatives appoints two representatives as members. The commission is:

- Required to administer the Capitol building fund.
- Required to develop and modify long-term plans for the development of the Capitol grounds and approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the Capitol grounds.
- Allowed to accept or reject gifts for exterior placement on the Capitol grounds or for the improvement of the exterior construction of any building or facility on the Capitol grounds, including landscaping and improvements to the Capitol grounds. No construction or placement of an item on the Capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the Legislative Assembly.

- Required to advise the director of OMB and the Legislative Council on matters relating to the physical and aesthetic features of the interior of all buildings on the Capitol grounds and must be consulted before the purchase or installation of furniture or fixtures in public areas of the Capitol and other buildings on the Capitol grounds.

The 2019 Legislative Assembly appropriated \$4.22 million from the Capitol building fund to OMB for the 2019-21 biennium, including \$2 million for a Capitol south entrance project, \$1.9 million for extraordinary repairs, and \$320,000 for special assessments. The 2017-19 ending fund balance was \$6.5 million. The estimated 2019-21 biennium ending balance in the fund is \$3.5 million.

### **Office of Management and Budget**

The committee received testimony from a representative of OMB regarding accessibility of the State Capitol grounds, including concerns and suggestions to improve accessibility to comply with the ADA, concerns that can be addressed during the 2019-20 interim, and concerns that will require funding during the 2021-23 biennium. The Office of Management and Budget, with approval by the Capitol Grounds Planning Commission, ensures the Capitol grounds are in compliance with the ADA. Since the implementation of the ADA, changes made to the Capitol include the addition of a handicap bathroom stall in the restrooms, replacing stairs with ramps on the ground floor, installing a lift in the entrance of the Brynhild Haugland Room, and the replacement of four elevators.

A total of 25 handicap accessible parking spaces are available to the north, west, and southeast of the Capitol. In 2016, the Highway Patrol implemented additional security measures by requiring all visitors to enter through the south entrance of the Capitol and allowing entrance through the north and west entrances by key card access only, reducing use of the 21 handicap accessible parking spaces to the north and west of the Capitol. The representative of OMB reported 25 handicap parking spaces is an adequate number for the parking lots surrounding the Capitol, but because 21 of the spaces are no longer readily accessible due to the security policies, the remaining 4 spaces are not adequate.

The committee was informed OMB hired an architectural firm for the Capitol south entrance project, which will be designed to meet all ADA standards. The project will provide additional accessible parking spaces at a closer proximity to the building.

The committee was informed OMB hired J2 Studio Architecture + Design, PC, (J2 Studio) to assess accessibility of the State Capitol and compliance with the ADA.

The committee received a report from J2 Studio, which included improvement suggestions for accessibility of Capitol facilities. The report provides a summary of ADA accessibility concerns of the House and Senate Chambers, legislative committee meeting rooms, restrooms, the cafeteria, the Supreme Court, and areas of the State Capitol accessible to the public.

The report indicated minor changes necessary for ADA compliance can be completed at little to no cost, including installing braille signage at room entrances, mounting fire extinguishers at appropriate heights, changing door knobs to door levers, adjusting doors to require a maximum push-pull effort of five pounds, and moving chairs and furniture clear of doors and aisles. The Office of Management and Budget reported the agency has completed a portion of the minor ADA compliance changes needed during the 2019-20 interim.

J2 Studio reported additional ADA compliance changes needed include installing trap and supply covers on restroom sinks, replacing restroom stall handles with ADA-compliant handles, reconstructing ADA restroom stalls with correct dimensions, installing assisted listening devices in committee rooms, installing and labeling lockers for ADA accessibility, adding an ADA-compliant booth in the cafeteria, and replacing cafeteria cooler handles with ADA-compliant handles.

The cost of the improvements to the State Capitol for ADA compliance as estimated by OMB is \$460,950, which includes \$286,100 for public spaces and meeting rooms and \$174,850 for restrooms. The costs relate to the purchase and installation of signage, door lever locksets, door operators and closers, handrails, new doors, assisted listening devices, a new wheelchair lift, restroom stalls and grab bars, sink trap covers, and new lockers. The repairs would be made in legislative committee rooms and chambers, public areas of the State Capitol, including the legislative and judicial wings, the cafeteria, and certain restrooms in the Capitol tower.

The committee was informed other considerations to make the State Capitol more accessible, but which are not related to compliance with the ADA, include adding benches throughout the State Capitol, creating bariatric seating in public areas, and renovating a restroom into a family restroom. The cost of the additional accessibility improvements as estimated by OMB is \$172,400. Architecture fees and other potential costs may result in additional costs estimated by

OMB of \$116,650. Therefore, a total of \$750,000 is estimated to be needed to comply with the ADA and improve accessibility of the State Capitol.

The representatives of OMB stated the agency intends to request the entire \$750,000 in its 2021-23 biennium budget request. The Office of Management and Budget reported if an appropriation is provided during the 2021 legislative session, the funding likely would be available on July 1, 2021. The timing required for the request for proposal process and hiring an architect would result in an estimated construction period for the improvements of January 2022 through April 2022.

### **Security**

The committee received testimony from the Highway Patrol regarding the State Capitol grounds, including federal Department of Homeland Security requirements and any conflicts with the ADA. The testimony from a representative of the Highway Patrol indicated if members of the public are visiting the Capitol and require assistance, Capitol Security will assist them to their destinations, including assisting individuals through exterior entrances not usually open to the public. If a member of the public is allowed to enter an exterior entrance not usually open to the public, Capitol Security will conduct the security screening process for the individual at that entrance. Each entrance into the Capitol is equipped with a call box to contact Capitol Security if accessibility assistance is needed.

### **Building Codes and ADA Conformance Statements**

The committee received testimony from the Department of Commerce regarding the State Building Code, ADA requirements related to the State Capitol grounds, and statements of ADA conformance submitted to the department pursuant to Section 54-21.3-04.1. The department's Division of Community Services' primary role in administering the State Building Code is to work with the State Building Code Advisory Committee to develop and publish the code. The State Building Code is adopted every 3 years after international codes are published. The most recent State Building Code became effective January 1, 2020.

Section 54-21.3-04.1 provides a state agency or the governing body of a political subdivision must require vendors preparing plans and specifications for buildings or other facilities to submit an ADA conformance statement to the Division of Community Services. The Division of Community Services receives an average of 150 statements each year. While there are more than 150 building permits issued statewide each year, the department is not authorized to inspect or enforce the conformance statement process. The department reported each state or local agency must ensure the conformance statement requirement is completed.

### **Recommendation**

The committee recommends [House Bill No. 1030](#) to provide an appropriation of \$750,000 from the Capitol building fund to OMB, of which \$460,950 is for costs associated with the implementation of changes to the State Capitol grounds for compliance with the ADA and \$289,050 is for additional costs to improve accessibility of the State Capitol during the 2021-23 biennium. The bill draft requires OMB to consult with the Legislative Management when considering changes to legislative branch areas and with the Chief Justice when considering changes to judicial branch areas.

## **REVENUE-GENERATING USES OF THE VETERANS' HOME STUDY**

### **Background**

#### **History and Eligibility**

The committee reviewed the history of the Veterans' Home and its facilities, occupancy rates for basic care and skilled care, and potential uses of Veterans' Home facilities and grounds for other revenue-generating uses and any concerns regarding these activities, including the effect of federal funds requirements and on the availability of federal funds.

The Veterans' Home, originally called the Old Soldiers' Home, is owned and operated by the state. The Veterans' Home includes two basic care pods that can house 98 residents and one skilled care pod that can house 52 residents for eligible North Dakota veterans, including honorably discharged soldiers of the North Dakota National Guard, and spouses. Each pod includes four households designed for 12 to 13 residents in each household. The facility has 142 private rooms and 4 semi-private rooms, each room with its own private bathroom. Each household has a living room area, open kitchen, and dining area.

Section 13 of Article IX of the Constitution of North Dakota and Section 37-15-01 provide the Veterans' Home is to be located in Lisbon. Pursuant to Section 37-15-10, to be eligible for admission, veterans must meet one of the following criteria:

- Be a bona fide resident of North Dakota;
- Have served in a North Dakota regiment;
- Entered the armed services as a North Dakota resident; or

- Be a spouse or surviving spouse of an eligible veteran meeting the criteria above.

The basic care unit requires potential residents to have total independence with personal care needs--bathing, dressing, eating, ambulating (walking), toileting, and transferring. The skilled care unit requires a potential resident meet the North Dakota criteria for nursing home placement.

As of August 2020, 53 individuals were in the basic care unit, an occupancy rate of 54.1 percent and 49 individuals were in the skilled care unit, an occupancy rate of 94.2 percent. Of the Veterans' Home's 8 basic care pods, 2 pods are closed due to low occupancy.

North Dakota has experienced a decrease of more than 900 skilled care bed capacity, an increase of 726 basic care bed capacity, and an increase of 1,490 of assisted living bed capacity since 2004. The state average occupancy rate for skilled care is 90 percent while the average basic care occupancy rate is 70 percent.

As of September 2017, there were nearly 20 million veterans nationwide, of which 51,677 were North Dakota veterans. Of this number, 22,033, or 42.6 percent, were age 65 or older. The VA estimates the number of veterans in 2045 will decrease to 12 million nationwide and 42,000 in North Dakota.

**Services**

Residents of the Veterans' Home receive medical treatment, including 24-hour nursing care, and access to registered nurses, licensed practical nurses, medication technicians, household coordinators, and resident living specialists to provide personal care for each resident. The Veterans' Home also offers onsite pharmacy services (for veterans); transportation to the Fargo Veterans' Administration Medical Center; transportation to local medical appointments; dietary and nutritional services, including special diet menus; chaplain and spiritual care services; mental health services; physical, occupational, and speech therapy services; social services; recreational therapy, including scenic drives, shopping trips, bingo, parties, card games and access to an activity room; laundry services; therapeutic work program; and financial services.

**Moratoriums**

The Legislative Assembly, in House Bill No. 1355 (2019), amended Section 23-09.3-01.1 to extend the moratorium on expansion of basic care bed capacity in the state through July 31, 2021. The bill also amended Section 23-16-01.1 to extend the moratorium on expansion of long-term care, including skilled care bed capacity in the state through July 31, 2021. These moratoriums preclude nursing facilities from adding basic care or long-term care beds to the state's licensed bed capacity.

**Revenue**

Section 37-15-14 establishes a Veterans' Home operating fund, also known as the soldiers' home fund, to be maintained in the State Treasury. Revenue for the fund is derived from interest on the sale of lands, land rent, and federal funds provided for the support and maintenance of the Veterans' Home.

Section 37-15-14.1 allows the Veterans' Home Governing Board to establish fees to be paid by residents of the Veterans' Home, which must be based on the adjusted income of each resident, but not to exceed 49 percent of the average daily resident cost. Because the fee is based on the adjusted income of each resident, some residents pay the maximum rate of \$1,850 while other residents pay \$0 each month. In addition, the Veterans' Home receives federal funding of \$47.36 for every day each resident is enrolled in basic care.

Skilled care residents are charged a daily rate developed by the Department of Human Services' case mix system. The current skilled care rate range is \$227 to \$681 each day. In addition, the Veterans' Home receives federal funding of \$109.73 for every day each resident is enrolled in skilled care.

Revenue collected in the fund for the 2011-13 through 2017-19 bienniums is as follows:

	<b>2011-13 Biennium</b>	<b>2013-15 Biennium</b>	<b>2015-17 Biennium</b>	<b>2017-19 Biennium</b>
Federal funding	\$4,740,347	\$5,081,942	\$5,660,005	\$5,341,234
Interest income	461	371	323	429
Donations	6,964	8,085	6,793	4,453
Pharmacy copayments	150,922	208,544	180,539	101,382
Meal sales and miscellaneous sales and services	57,938	87,787	132,686	133,933
Care and treatment - Medical assistance	3,616,320	2,779,692	3,265,251	2,974,125
Care and treatment - Medicare	7,774	383,939	337,664	280,986
Care and treatment - Blue Cross Blue Shield	3,847,721	5,796,853	6,596,734	6,855,651
Care and treatment - Other	1,736,893	1,675,770	1,749,841	1,626,177
Mineral royalties	4,770			5,456

	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium
Insurance recoveries		400,000	32,500	
Other	3,919	18,275	16,003	13,766
Transfer to the Melvin Norgard memorial fund	(258,966)			
Transfer from the state lands permanent fund	279,429	325,428	434,000	711,984
<b>Total</b>	<b>\$14,194,492</b>	<b>\$16,766,686</b>	<b>\$18,412,339</b>	<b>\$18,049,576</b>

In addition to the soldiers' home fund, the Veterans' Home maintains the Melvin Norgard Memorial fund and the Veterans' Home custodial funds. Revenue deposited in the Melvin Norgard Memorial fund is derived from mineral lease income, royalties, and sale proceeds from land gifted to the Veterans' Home from Melvin Norgard. Revenue deposited in the custodial funds is derived from donations, gifts, or bequests given to the Veterans' Home. During the 2017-19 biennium, revenue deposited in the Melvin Norgard Memorial fund was \$178,014 while \$198,092 was deposited in the custodial funds.

### Veterans' Home Basic Care

Basic care rent is calculated at 55 percent of a veterans' monthly income, less medical expenses. The current maximum chargeable rent is \$1,850 for basic care. Spouses of veterans pay the maximum rate regardless of income or expenses. The Veterans' Home average cost of care for a basic care resident is between \$4,000 to \$4,500 each month, which is paid by a combination of federal funds, state funds, and resident rent collections.

The VA pays a daily per diem rate of \$47.35 on behalf of each Veterans' Home resident. The per diem rate of \$47.35 is provided by the VA and used by the Veterans' Home for pharmacy costs of residents. If a resident is absent from the Veterans' Home for more than 96 hours, the VA does not provide the daily per diem for the resident. The committee was informed the Veterans' Home does not have another revenue source to replace the reduction in VA per diem funding, which has resulted in a Veterans' Home policy of requiring residents to pay the daily per diem rate to cover their pharmacy costs if they exceed the allowable 96-hour absence policy. An average of five residents per year exceed the 96-hour allowable absence period.

According to testimony, veterans' homes in other states also have experienced low basic care occupancy, including Minnesota (60 percent), Massachusetts (57 percent), Pennsylvania (55 percent), Iowa (50 percent), Ohio (45 percent), New Mexico (40 percent), and Kansas (33 percent).

The committee was informed obstacles to filling basic care beds include a declining number of World War II and Korean War veterans, community in-home care programs, the VA hospice care program, and the VA in-home care program. The VA hospice care program covers a veteran's hospice care costs if the veteran is a resident of a private nursing home, but not a state's veterans' home. The VA in-home program provides family caregivers \$26,500 each year to care for a family member veteran at home rather than admitting the veteran to a nursing home. Testimony indicated other obstacles for the Veterans' Home include lack of funding for advertising and staff education and staff turnover due to private sector salaries being higher than state employee salaries.

Testimony indicated increasing the maximum monthly basic care rent of \$1,850 would affect only 10 to 15 residents. If the 49 percent of adjusted income calculation for basic care rent is increased, the Veterans' Home may experience an increase in revenue; however, increasing the basic care rent also could result in lower basic care census because the cost of renting an off-campus apartment may be less costly than the new basic care rent at the Veterans' Home, causing the Veterans' Home to lose revenue.

### Other Potential Revenue-Generating Uses of the Veterans' Home

The committee received testimony suggesting in addition to changing the basic care rent rate calculation, potential revenue-generating uses of the Veterans' Home which would be eligible for federal VA funding include:

- Adding additional skilled care beds;
- Adding an adult day care program; and
- Remodeling basic care areas into independent assisted living units.

### Additional Skilled Care

Skilled care residents are charged a daily rate developed by the North Dakota human services case mix system. The monthly rent for skilled care can range from \$6,800 to \$20,000.



The committee was informed while the VA will provide funding to convert basic care beds to skilled care beds, that approach may not be desirable given the recent statewide reduction of skilled care beds. The Veterans' Home has had fluctuating demand for skilled care services, including having a waiting list of up to 10 individuals and having vacant skilled care beds due to decreases in skilled care demand.

### **Adult Day Care**

The committee learned the Minnesota Veterans' Home added an adult day care program, but the program has not been successful and its expenses are exceeding its revenues. Testimony indicated the Veterans' Home may have difficulties having success with an adult day care program in rural North Dakota due to a lack of demand for adult day care services in areas near Lisbon.

### **Independent Assisted Living**

The committee was informed the VA may provide federal funding to the Veterans' Home for a portion of the operating costs of assisted living services if the Veterans' Home converted basic care beds to assisted living. The program would need to be implemented and successful before any federal funding would be received. If the program is successful, the Veterans' Home would be placed on a national waiting list with other state agencies requesting federal funding for veteran programs, which means it may be several years before the Veterans' Home would receive federal funding for an assisted living program. The Veterans' Home has relatively new facilities, which may result in the Veterans' Home being placed low on national federal funding waiting lists.

If the Veterans' Home remodeled basic care areas to assisted living units, the VA will provide 65 percent of the remodel cost with the state providing the 35 percent match. An assisted living remodel would include adding a kitchenette to rooms and adding larger rooms and spouse rooms. Assisted living services would include resident fees for housekeeping, medication, meal plans, and nursing care. The committee received testimony indicating disadvantages of a potential remodel would be the loss of eight rooms and rent structure changes.

### **Veterans' Home Governing Board**

The committee received testimony from the Veterans' Home Governing Board regarding suggestions for other revenue-generating uses of the Veterans' Home.

The Veterans' Home Governing Board determined an adult day care program would not be profitable because of the lack of demand for adult day care services in the areas near the Veterans' Home. The board indicated increasing the number of skilled beds would not be profitable because the Veterans' Home has vacant skilled beds and no skilled care waiting list. In addition, the committee was informed these options also may be challenging because the Veterans' Home has several vacant positions it is unable to fill.

### **Basic Care Census Concerns**

The committee received testimony indicating the Veterans' Home's low census is due to a lack of area workers available to work at the Veterans' Home and a lack of veterans applying for residency. Although the basic care census was nearly 100 percent 4 years ago, several World War II and Korean War residents have died. The Veterans' Home anticipates more Vietnam War veterans will start applying for residency at the Veterans' Home, which will increase the number of basic care and skilled care residents.

The committee received information suggesting an increase in the Veterans' Home budget for advertising costs may promote awareness of the Veterans' Home and the services provided and potentially result in increasing its basic care occupancy rate.

The Veterans' Home Governing Board hired Eide Bailly, LLP to develop a strategic plan for the Veterans' Home which will include study options and recommendations for filling vacant basic care beds. The Eide Bailly recommendation report is expected to be completed in December 2020.

### **Federal Funding Concerns**

The committee was informed other revenue-generating uses of the Veterans' Home may include leasing a portion of the Veterans' Home to third parties; however, if the facility, which was constructed using federal VA funds, would be used for nonveteran-related programs, the state would have to reimburse the VA for all federal funding used to construct the Veterans' Home. In addition, the Veterans' Home is not allowed to have less than 75 percent veteran occupancy in the facility or the Veterans' Home will lose federal per diem payments, which accounts for approximately 33 percent of the Veterans' Home revenue.

Any violation of these VA regulations may trigger a federal recapture clause, which could result in the state having to repay the federal government \$14,684,000 for the federal portion of the Veterans' Home construction costs and \$670,000 for the amount the federal government contributed for the Veterans' Home art studio and wood shop addition. An

alternative option is for the state to pay the federal government approximately \$15,354,000, resulting in the entire facility being owned by the state, which would allow the state to use the facility for nonveteran programs. The requirement to repay the VA for the portion of federal funds used to construct the Veterans' Home will eventually expire; however, that date is unknown, and the Veterans' Home has not received specific information from the VA on the subject.

**Workforce Concerns**

The committee was informed converting basic care areas to skilled care or adult day care may be challenging because the Veterans' Home has several vacant positions it is unable to fill, primarily due to Veterans' Home wages being lower than those of medical facilities in the area.

Testimony indicated it is difficult for the Veterans' Home to recruit nurses near Lisbon and it is common in the medical profession for workers to move between organizations in pursuit of higher paying jobs. This combination has led to a worker shortage at the Veterans' Home.

The committee received testimony contending the Veterans' Home wages are less than nearby facilities in part because state employees did not receive salary increases during the 2017-19 biennium. The Veterans' Home has competitive employee benefits, but private organizations are beginning to offer benefits comparable to the state. Testimony suggested nurses living near Lisbon are willing to drive to a larger city, such as Valley City or Fargo, for a higher salary.

**Vietnam Veterans of America**

The Vietnam Veterans of America (VVA) reported many North Dakota VVA members discuss becoming residents of the Veterans' Home if they require basic care or skilled care services. The committee was informed VVA members throughout the country often become residents of veterans' homes in their home states.

**Committee Considerations**

The committee discussed delaying any changes to the basic care and skilled care areas of the Veterans' Home until additional information is available regarding the number of Vietnam War veterans who may apply for residency at the Veterans' Home. The committee discussed the importance of reviewing the strategic plan being prepared by Eide Bailly, when it is available, before making any revenue-generating changes at the Veterans' Home.

**Recommendation**

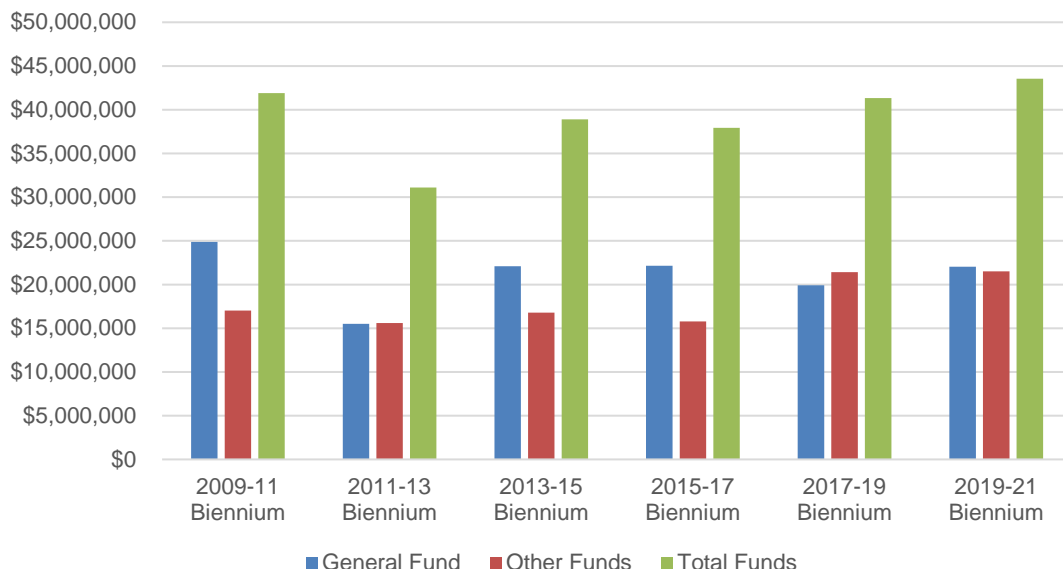
The committee makes no recommendation regarding the study of revenue-generating uses of the Veterans' Home.

**STATE AND FEDERAL VETERANS' PROGRAMS STUDY**

**Background**

State funding for veterans' programs is provided primarily to the North Dakota Department of Veterans' Affairs (NDVA), Veterans' Home, and the Adjutant General - National Guard. Additional programs are provided by the North Dakota University System office for veterans' assistance grants and the Tax Department for veteran tax credits.

The following is a summary of funding for North Dakota veteran programs for the 2009-11 through 2019-21 bienniums:



	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium	2019-21 Biennium
General fund	\$24,869,777	\$15,500,327	\$22,100,136	\$22,148,052	\$19,911,279	\$22,049,910
Other funds	17,022,780	15,592,023	16,797,205	15,781,985	21,415,729	21,502,044
Total funds	\$41,892,557	\$31,092,350	\$38,897,341	\$37,930,037	\$41,327,008	\$43,551,954
<b>Funding Increase (Decrease)</b>						
General fund	N/A	(\$9,369,450)	\$6,599,809	\$47,916	(\$2,236,773)	\$2,138,631
Other funds	N/A	(1,430,757)	1,205,182	(1,015,220)	5,633,744	86,315
Total funds	N/A	(\$10,800,207)	\$7,804,991	(\$967,304)	\$3,396,971	\$2,224,946
<b>Percentage Increase (Decrease)</b>						
General fund	N/A	(37.7%)	42.6%	0.2%	(10.1%)	10.7%
Other funds	N/A	(8.4%)	7.7%	(6.0%)	35.7%	0.4%
Total funds	N/A	(25.8%)	25.1%	(2.5%)	9.0%	5.4%

### Administrative Committee on Veterans' Affairs

The committee received testimony from the Administrative Committee on Veterans' Affairs (ACOVA) regarding its oversight of NDVA and the Veterans' Home, programs available to North Dakota veterans, and ways to improve the care, assistance, and benefits available to veterans. The testimony stated adding full-time equivalent positions to the NDVA budget would improve the care, assistance, and benefits available to North Dakota veterans. The testimony indicated areas of need are for county and tribal veteran service officers (VSO), women veteran coordinators, and loan and grant officers. The testimony also indicated additional funding for outreach, website improvements, advertising, and staff training is needed.

### North Dakota Department of Veterans' Affairs

The committee received testimony from NDVA regarding programs and services offered by NDVA and ways to improve the care, assistance, and benefits available to veterans. The mission of NDVA is to assist veterans of North Dakota and their dependents in obtaining all benefits to which they are entitled, both federal and state, either by direct contact or through the assistance of county and tribal VSOs. The department reported the following programs and services are available to veterans through NDVA:

- Developing, accepting, and completing VA compensation and pension claims;
- Counseling on employment, educational programs, financial assistance, vocational rehabilitation, disability benefits, medical care programs, nursing home assistance, death benefits, and other veterans' benefits;
- Administrating the veteran's aid loan program and the hardship assistance grant program to assist veterans financially with services, such as dental, hearing, optical, transportation, and housing needs;
- Administrating transportation programs to help transport veterans to the Fargo VA Medical Center, the Miles City VA Medical Center in Montana, and the Fort Meade VA Medical Center in South Dakota;
- Training newly appointed tribal and county VSOs;
- Helping veterans and their dependents access various programs, benefits, and resources, including programs related to health care, mental and behavioral health, education and training, financial assistance and programs, employment and entrepreneurship, housing, burial and memorial, outreach, legal services, women and minority specialized services, veteran appreciation, and other assistance services;
- Supervising the State Approving Agency, which is federally funded and works with the VA to manage veteran education benefits and approves and supervises programs of education and training for eligible veterans, dependents, National Guard members, and reservists; and
- Accepting, safeguarding, and providing certified copies of military discharge papers and other documents.

The testimony stated NDVA provides veteran suicide prevention and awareness services. The department reported nationally there is an average of 20 veteran suicides each day, of which 14 are not receiving services from the VA. The department also promotes a federal "suicide challenge" program that includes collaboration with the VA, governor, and North Dakota mayors to raise awareness of counseling and other suicide prevention services available to veterans.

The department estimated during the fall of 2019 North Dakota has approximately 400 homeless veterans.

The department reported additional staff would allow NDVA to improve the care, assistance, and benefits available to veterans.

## **Adjutant General - National Guard**

The committee received testimony from the office of the Adjutant General regarding National Guard enlistment trends, National Guard programs available to North Dakota veterans, and any concerns or suggestions regarding services and benefits available to North Dakota veterans. The committee was informed National Guard programs are offered at family assistance centers in Bismarck, Fargo, Minot, Devils Lake, Grand Forks, and Jamestown, there are education benefits offices in Bismarck and Fargo, and survivor outreach services are available in Bismarck.

Concerns of the National Guard for service members include the lack of providers of behavioral health and mental health services, the lack of providers that will accept TRICARE insurance, and education of the benefits and services available to service members. Testimony submitted to the committee stated the location of in network TRICARE providers and scheduling availability often are concerns of service members. The testimony indicated there are low reimbursement rates and frequent contract changes for TRICARE dental insurance.

The office of the Adjutant General reported a way to improve services and benefits available to National Guard service members is to increase the number of behavioral health, mental health, and TRICARE insurance providers by working with licensing boards and increasing incentives for providers to come to and stay in North Dakota.

## **United States Department of Veterans Affairs**

### **Veterans Health Administration**

The committee received testimony from the Fargo Medical Center Veterans Health Administration (VHA) regarding federal programs available to North Dakota veterans, collaboration with state veteran programs, and ways to improve the care, assistance, and benefits available to veterans. The VHA recently increased mental health and evidence-based therapy staff for veterans suffering from mental health and suicide issues. The services also are offered at VHA outpatient clinics through telehealth electronic communications. The testimony indicated needs of North Dakota veterans include:

- Additional mental health services;
- Additional transportation services for veterans in rural areas of the state;
- Marketing to and educating veterans regarding programs and services for which they are eligible and encouraging veterans to utilize those services.

### **Veterans Benefits Administration**

The committee received testimony from the Fargo Medical Center Veterans Benefits Administration (VBA) regarding federal programs available to North Dakota veterans, collaboration with state veterans' programs, and ways to improve the care, assistance, and benefits available to veterans. The benefits administered by VBA includes disability compensation, disability and death pension benefits, education benefits, vocational rehabilitation and employment, home loan guarantees, life insurance, dependents' educational assistance, survivor benefits, and burial benefits. Ancillary benefits include aid and attendance, housebound benefits, automobile allowance and specially adapted automobiles, specially adapted housing and home adaptation grants, and fiduciary services for veterans unable to manage financial affairs. The VBA reported there is minimal duplication in programs offered to veterans from federal, state, local, and private entities and that the VA works with state, local, and private entities to identify unmet needs of veterans so those veterans can receive services they need.

### **County Veteran Service Officers**

The committee received testimony from a county VSO who reported VSOs offer various services to veterans, including services related to health care, disability compensation and pension, educational assistance, vocational rehabilitation, home loan guaranties, and assistance with NDVA loans and grant programs. The VSOs collaborate with the VA, NDVA, and veteran service organizations. The VSOs advocate for veterans and their families, advise veterans of available programs and benefits, assist in the preparation of VA and NDVA benefit claims, and inform the public of veterans' programs. The VSO reported a major need of North Dakota veterans is transportation to medical appointments.

### **Veteran Service Organizations**

The committee received testimony from representatives of the AMVETS, Veterans of Foreign Wars (VFW), VVA, American Legion, Disabled American Veterans (DAV), and North Dakota Veterans Legislative Council.

The AMVETS reported veteran service organizations can improve membership trends by working together, combining resources, and focusing on the needs of veterans and their families. The AMVETS indicated forming veteran service organizations that serve all veterans, instead of having separate AMVETS, American Legion, DAV, VVA, VFW, and other veteran service organizations may serve North Dakota veterans better. The AMVETS reported the expansion of ACOVA membership may be beneficial because there are veterans who are not represented by the major veteran service organizations and are not involved in the ACOVA appointment process.

The American Legion reported ways to improve the care, assistance, and benefits available to veterans include increasing funding provided to veteran service organizations, authorizing additional NDVA staff, increasing programming and staff for the NDVA highly rural transportation program, and increasing advertising for veterans' programs.

The Disabled American Veterans reported ways to improve the care, assistance, and benefits available to veterans include authorizing additional NDVA staff to process veteran VA claims, providing new transport vans for the nonhighly rural transportation program, and encouraging veterans to talk to VSOs to learn about veteran programs and benefits available to them.

### **Task Force for Veterans Affairs**

The committee received testimony from the Governor's Task Force for Veterans Affairs regarding the task force's mission and role, and how the task force has collaborated with other organizations to improve the care, assistance, and benefits available to veterans. The task force was established in October 2018 by an executive order issued by Governor Doug Burgum. The executive order required the task force to:

- Examine the current structure of veterans' affairs governance and service delivery, evaluating strengths and weaknesses in the current system;
- Identify areas for increased collaboration, communication, and efficiencies in and among existing programs, state agencies, and other resources utilized for the services of veterans in the state; and
- Provide recommendations to improve the current governance structure and services for veterans in North Dakota.

The COVID-19 pandemic has delayed the task force's final recommendations for the Governor. The preliminary recommendations of the task force to the Governor include:

- Maintain ACOVA membership at 15 but reducing the number of members from the 5 largest veteran service organizations from 3 members each to 2 members each. The remaining 5 members would be elected by all North Dakota veterans and may include nominations from all veteran service organizations. All members would still be appointed by the Governor.
- At least 1 member of ACOVA be a member of one of North Dakota's Native American tribes.
- At least 1 member of ACOVA be female.
- If a member can no longer serve on ACOVA, the member's position must be filled by nominations from all North Dakota veterans.
- Remove the Adjutant General as an ex-officio, nonvoting member of ACOVA.
- Require ACOVA to standardize the criteria for nominating members in the ACOVA operating manual.
- Continue support for and awareness of veteran behavioral health support.
- Continue efforts to eliminate veteran homelessness, including establishing a Department of Veterans' Affairs Committee to End Veteran Homelessness.
- Increase education and awareness of medical marijuana for veterans.

### **Tax Commissioner**

#### **Income Tax Benefits**

The committee received testimony from the Tax Commissioner's office regarding state income tax benefits available to North Dakota veterans and recent veterans' tax credit trends. Century Code provides for two direct income tax benefits to North Dakota military veterans:

- The mobilized National Guard/Reserve member pay exclusion; and
- The military retirement pay exclusion.

The mobilized National Guard/Reserve member pay exclusion was created in 2003, is available to National Guard or Reserve service members mobilized for federal active duty, and allows for a deduction of 100 percent of federal active duty compensation on the North Dakota income tax return. The deduction was claimed on 204 individual income tax returns for tax year 2017 and 165 returns for tax year 2018.

The military retirement pay exclusion was created in 2019 and is available to retired members of the United States armed forces or its reserves, Army National Guard, or Air National Guard, or a surviving spouse of a deceased retired

service member. There are approximately 6,000 retired North Dakota veterans receiving military retirement pay, including approximately 570 surviving spouses of deceased retired service members.

### **Property Tax Benefits**

The committee received testimony from the Tax Commissioner's office regarding state property tax benefits available to North Dakota veterans and recent veterans' tax credit trends. Section 57-02-08.8 provides a property tax credit for disabled veterans with a service-connected disability of 50 percent or greater. The number of applicants has increased from 3,111 for tax year 2015 to 4,017 for tax year 2018. Section 57-02-08(20)(a) provides a property tax exemption to a paraplegic disabled veteran up to a maximum of \$120,000 of the structures and improvements of the veteran's homestead.

### **Recommendation**

The committee makes no recommendation regarding the study of state and federal veterans' programs.

## **OTHER COMMITTEE DUTIES**

### **Report on Federal Funds**

Section 54-27-27.1 requires each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, to report to OMB a plan to operate the state agency if federal funds are reduced by 5 percent or more of the total federal funds the state agency receives. The report must include information on whether the agency will request state funds to offset the decrease in federal funds. The report is not required to address a reduction in federal funds received by the agency which is a result of:

1. A decrease in caseloads or cost per case;
2. A change in the anticipated project completion date for a construction project qualifying for federal fund reimbursement;
3. The completion of a one-time project funded in whole or in part by federal funds.

The Office of Management and Budget is required to report to the Legislative Management by October 15 of each even-numbered year on the reports received from state agencies under this section. The report must include a summary of the reports received from state agencies on how each agency will operate with the reduction in federal funds. The Government Administration Committee was assigned responsibility for receiving this report for the 2019-20 interim.

The committee received a report from OMB in August 2020 regarding state agency plans to operate if federal funds are reduced by 5 percent or more of the total federal funds the agency receives. Of the 32 executive branch agencies receiving federal funds during the 2019-21 biennium, 2 agencies expect a decrease in federal funds of 5 percent or more in the 2021-23 biennium, including the Information Technology Department and the Adjutant General. Neither agency intends to request state funds to offset the anticipated decrease in federal funds and neither agency expects a significant impact to agency operations for the 2021-23 biennium.

### **Agreements Between North Dakota and South Dakota**

Section 54-40-01 provides an agency, department, or institution may enter an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function the entity is authorized to perform by law. Any proposed agreement must be submitted to the Legislative Assembly or, if the Legislative Assembly is not in session, to the Legislative Management or a committee designated by the Legislative Management for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Management. The Government Administration Committee was assigned this responsibility for the 2019-20 interim.

The committee received information regarding the history of the bistate authority legislation. The South Dakota Legislature in 1996 enacted a law creating a legislative commission to meet with a similar commission from North Dakota to study ways North Dakota and South Dakota could collaborate to provide government services more efficiently. The North Dakota Legislative Council (Legislative Management) appointed a commission to meet with the South Dakota commission. As a result of the joint commission, the North Dakota Legislative Assembly enacted legislation relating to higher education and the formation of a cooperative agreement with South Dakota. The South Dakota commission proposed several initiatives, but the South Dakota Legislature did not approve any of the related bills.

During the 2019-20 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

# GOVERNMENT FINANCE COMMITTEE

The Government Finance Committee was assigned the following responsibilities:

- Study of the feasibility and desirability of reducing Lewis and Clark Interpretive Center fees and consider alternatives to address the sustainability of the Parks and Recreation Department's operations of the Lewis and Clark Interpretive Center. (2019 House Bill No. 2019, § 14)
- Study of the public access and use of real property located between the Missouri River and the Missouri River Correctional Center (MRCC), owned by the State of North Dakota, under the control of the Department of Corrections and Rehabilitation (DOCR), and the impact of transferring the property to the Parks and Recreation Department. (2019 House Bill No. 2019, § 15)
- Study, in coordination with the State Auditor, the provisions of the North Dakota Century Code relating to state agency fees. The study must include a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended; consideration of whether the amounts of fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services. (2019 Senate Bill No. 2130, § 1)
- Receive a report before June 30, 2020, from the Department of Environmental Quality (DEQ) regarding the department's plan for boiler inspection fees to meet program expenses. (2019 House Bill No. 1024, § 32)
- Review state budget information, including the monitoring of state revenue and appropriations. (Legislative Management directive)

Committee members were Senators Ronald Sorvaag (Chairman), Howard C. Anderson, Jr., Randy Burckhard, Dwight Cook, Jordan Kannianen, Diane Larson, Erin Oban, and Jessica Unruh-Bell and Representatives Bert Anderson, Larry Bellew, Jeff Delzer, Sebastian Ertelt, Jay Fisher, Michael Howe, Corey Mock, Gary Paur, Mike Schatz, and Michelle Strinden.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## LEWIS AND CLARK INTERPRETIVE CENTER STUDY

The committee was assigned a study of the feasibility and desirability of reducing Lewis and Clark Interpretive Center fees and consider alternatives to address the sustainability of the Parks and Recreation Department's operations of the Lewis and Clark Interpretive Center.

### Background Information

The Parks and Recreation Department operates the Lewis and Clark Interpretive Center near Washburn in conjunction with the Fort Mandan historic site. The interpretive center 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 (DOT). Since 1999 the Legislative Assembly has approved funding totaling \$10,073,341 related to the interpretive center, of which \$9,193,309 is from the general fund and \$880,032 is from other funds. The 2015 Legislative Assembly approved one-time funding of \$2,050,000 to transfer the interpretive center and certain assets from the Lewis and Clark Foundation to the state, to be operated by the Parks and Recreation Department. In addition, the Legislative Assembly appropriated \$125,000 from the general fund to the Parks and Recreation Department for operating costs of the interpretive center for the remainder of the 2013-15 biennium. For the 2019-21 biennium, the Legislative Assembly approved funding of \$1,250,687, including \$888,668 from the general fund, \$100,000 from DOT, and \$262,019 from the parks and recreation operating fund for operations of the interpretive center. The interpretive center has 3.75 full-time employees and 7 seasonal staff.

### Revenues, Expenditures, Fees, and Visitation

The committee reviewed historical information related to revenues, expenditures, fees, and visitation data of the Lewis and Clark Interpretive Center.

The following table provides a comparison of historical revenues and expenditures for the Lewis and Clark Interpretive Center for fiscal years 2015 through 2020:

	2015	2016	2017	2018	2019	2020
Revenue	\$54,128	\$270,493	\$253,742	\$432,801 <sup>2</sup>	\$388,803	\$241,329
Expenses	(2,181,841) <sup>1</sup>	(868,693)	(954,881)	(858,737)	(984,242)	(746,518)
Total income (loss)	(\$2,127,713)	(\$598,200)	(\$701,139)	(\$425,936)	(\$595,439)	(\$505,189)

<sup>1</sup>Includes Lewis and Clark Interpretive Center purchase cost \$2,050,000.  
<sup>2</sup>Includes \$100,000 transfer from DOT.

The following table provides information regarding the daily fees for the Lewis and Clark Interpretive Center:

	Rate
<b>Facility rentals</b>	
Event center	\$500 per day
Library meeting room	\$100 per day or \$75 per half-day
Fort Mandan lodge classroom	\$150 per day
Picnic shelters	\$50 per day
<b>Interpretive passes</b>	
Adult	\$8 per day
Student	\$5 per day
Family	\$25 per day

The committee was informed 75 percent of the visitors to the Lewis and Clark Interpretive Center are from outside North Dakota. The following table provides annual visitation data for the interpretive center:

	Fiscal Year 2017	Fiscal Year 2018
Building use	70,726	117,456
Paid admission	16,414	15,912
School tours	3,109	2,429
Facility rentals	42	38

### Comparisons to Similar Facilities

The committee received historical information related to funding provided by DOT for the Lewis and Clark Interpretive Center, and on the average cost to operate a rest area. The department provided \$100,000 to the interpretive center for the operation of the rest area during each of the 2017-19 biennium and the 2019-21 biennium or an average of \$50,000 per year. The committee was informed the annual operating cost of similar rest areas, which includes janitorial and utility, were as follows:

- 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.

The committee compared interpretive revenue at the Lewis and Clark Interpretive Center to interpretive revenue at Fort Abraham Lincoln State Park. The following schedule compares the revenue of fiscal years 2016 through 2019:

Fiscal Year	Lewis and Clark Interpretive Center	Fort Abraham Lincoln State Park
2016	\$75,441	\$69,881
2017	\$71,421	\$52,973
2018	\$72,392	\$52,664
2019	\$78,142	\$54,982

The committee received information showing the Lewis and Clark Interpretive Center fees are comparable to the Lewis and Clark Interpretive Center fees in Great Falls, Montana and other similar sites in North Dakota.

### Parks and Recreation Department Recommendation

The committee received the Parks and Recreation Department recommendation regarding the operations of the Lewis and Clark Interpretive Center. The department recommends continuing operations under its current business model along with the creation of an interpretive annual family pass.

### Recommendation

The committee makes no recommendation, but committee members expressed support for the Parks and Recreation Department's recommendation to continue operating under its current business model along with the creation of an interpretive annual family pass.



## **STATE AGENCY FEE STUDY**

The committee was assigned a study, in coordination with the State Auditor, of the provisions of the Century Code relating to state agency fees. The study included a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended; consideration of whether the fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services.

### **Background Information**

The committee reviewed the legislative history of changes to state agency fees in recent bienniums, previous studies of state agency fees, and survey responses from state agencies regarding fees charged by each agency.

### **State Agency Fees**

The committee received a performance audit of state agency fees conducted by the State Auditor's office. The audit period covered the 2017-19 biennium and the audit identified over 1,200 fees. The audit included North Dakota University System institutions' mandatory and other fees. The State Auditor's office defined a fee as "a fixed charge, or a sum paid or charged for a service" and the definition excludes any charges for taxes, fines, or penalties. For the University System, the State Auditor's office used the definition of fees from the North Dakota State Board of Higher Education Policy Manual, Policy 805.3 and those mandatory fees are defined as student fees, technology fees, North Dakota Student Association fees, and ConnectND fees. The committee was informed the other fees are application fees, distance learning access fees, course fees, program fees, capacity enrollment fees, and other incidental fees.

Due to the large number of fees, the committee determined the fees could not be adequately evaluated during 1 interim. The committee selected a small number of fees to obtain information to conduct an evaluation. The committee received information on the following state agency fees:

- Attorney General's beer and liquor license fees;
- DOCR's supervision fee; and
- DOT's antique personalized plate fee, antique plate fee, collector personalized plate fee, duplicate decal and registration card issuance fees, and public or nonprofit organization plate fees.

The committee considered the type of information to use to evaluate each fee. For each fee, the committee specifically reviewed the legislative history of the fee including fee changes, the revenue generated, the number of items issued relating to the fee, and the cost of providing the service related to the fee.

The committee considered options for reviewing fees. Due to the large number of fees to be studied, the committee considered the development of a process providing for the Legislative Management to study each agency fee every 10 years. The Legislative Management would determine which fees are studied and which committees would conduct the studies each interim. Agencies will conduct an evaluation of each of the fees the agency imposes and report to a Legislative Management interim committee along with a recommendation for each fee. The Legislative Management interim committee assigned a fee study will consider the agency evaluation report, public input, and other information to develop a recommendation for each fee identifying whether the Legislative Assembly should let the fee remain unchanged, be eliminated, increased, decreased, or otherwise modified.

### **Recommendation**

The committee recommends [House Bill No. 1031](#) to Chapter 54-35 to provide for a Legislative Management process of studying each state agency fee every 10 years.

## **PUBLIC ACCESS AND USE OF REAL PROPERTY STUDY**

The committee was assigned a study of the public access and use of real property located between the Missouri River and MRCC, owned by the State of North Dakota, under the control of DOCR, and the impact of transferring the property to the Parks and Recreation Department.

### **Background Information**

The Missouri River Correctional Center population includes inmates who meet the criteria for minimum custody. The inmates may include those convicted of violent offenses or sex offenses. The center is the only option for transition housing for this portion of the inmate population. While there is no fence around the property, MRCC provides a safe and secure environment by maintaining proper custody, work, education, and treatment programs, and encouraging inmates to make the needed change to be law-abiding citizens and productive members of society. Roughrider Industries operates a welding shop, sheep pasture, and sandbagging operation at MRCC providing jobs for inmates and revenue for DOCR. The committee reviewed the legislative history related to MRCC, which included a review of the Legislative

Management's interim Government Services Committee regarding the MRCC land use and planning study, including the department's plan regarding the relocation of MRCC completed during the 2013-14 interim. That committee concluded it was not desirable to move MRCC to an area adjacent to the Youth Correctional Center in Mandan, 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.

### **Missouri River Correctional Center Site**

The committee toured the MRCC site and received drone footage, an aerial image of the MRCC site, and a map of the area. The Department of Corrections and Rehabilitation leases 295 acres of farmland at \$415 per acre and invested \$300,000 in three irrigation pivots on the site. The committee received testimony indicating 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.

### **Land Use Options**

The committee received information from the Parks and Recreation Department regarding the feasibility and desirability of transferring MRCC land for use by the public, the potential impact of transferring MRCC land to the department, and the ability of the department to maintain the property. During the 2015 legislative session, the Legislative Assembly provided grant funding to the State Water Commission. With their funding, the State Water Commission provided a \$1 million grant to the Parks and Recreation Department for developing recreational activity on sovereign lands. As a result, the Parks and Recreation Department began planning a day park on the site. In 2016, DOCR transferred a portion of MRCC land to the Parks and Recreation Department, but in 2017 the land was returned to DOCR. The Parks and Recreation Department did not use the \$1 million grant received from the State Water Commission for developing the day park but instead used it for other purposes. The committee received a memorandum of understanding signed in July 2018, 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. The Parks and Recreation Department's study identified a desire to preserve the view shed of the land, which is directly across from Fort Abraham Lincoln State Park and its 2017 master plan for MRCC land was a highly developed plan with an estimated cost of \$6.7 million.

The committee received information from DOCR regarding the feasibility and desirability of transferring MRCC land for use by the public, the potential impact of transferring 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. The committee was informed 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 security prison because the seclusion of the facility helps provide security between the public and the inmates. The department expressed concern that increasing public use in the area increases the possibility of contraband being brought into the center, the public being on DOCR property, and unauthorized contact with inmates, and increases the need for additional law enforcement in the area. These concerns potentially have a negative impact on the transition and re-entry process of the minimum security inmates. According to the testimony, if DOCR had to mitigate these risks, the entrance to the park would need to be relocated to Washington Street and it would be necessary to construct a gated entrance to MRCC to prevent the public from inadvertently entering MRCC from 48<sup>th</sup> Street. Additional cameras and increased correctional staff also would be needed. It is estimated to cost \$20 per linear foot to construct a permanent barrier between the public use land and MRCC, and it was asserted the barrier could impact the transition and re-entry process of the minimum security inmates. The 2014 MRCC land use and planning study, which indicated it was physically feasible, but not desirable, to relocate MRCC to a site adjacent to the Youth Correctional Center, provided three concepts of which only one was developed to keep MRCC at its current location at a cost of \$7.1 million. However, that amount would need to be adjusted for inflation to reflect the current cost.

The committee considered a concurrent resolution to recognize the memorandum of understanding and option to acquire land entered by DOCR and the Parks and Recreation Department relating to the MRCC land.

### **Recommendation**

The committee recommends [House Concurrent Resolution No. 3002](#) to recognize the memorandum of understanding and option to acquire land, upon approval from the Legislative Assembly, entered by DOCR and the Parks and Recreation Department relating to MRCC land.

### **BOILER INSPECTION PROGRAM FEE REPORT**

The committee received a report from DEQ regarding the department's plan for boiler inspection fees to meet program expenses pursuant to Section 32 of House Bill No. 1024 (2019). The department reported it reviewed the fees charged for the boiler inspection program and determined an equitable approach would be to increase the inspection fees by \$10 and to increase the annual certificate fee by \$10. The boiler inspection fees are set in the North Dakota Administrative Code and range from \$35 to \$150. The department increased the inspection fees by \$10 effective July 1, 2020. The annual boiler certificate fee is set in statute and is \$20. The \$10 increase will require a statutory change. The department plans to request

a change to the boiler certificate fee during the 2021 legislative session and the department projects the boiler inspection program would be operating at a \$300,000 to \$400,000 deficit in the 2021-23 biennium if the fees are not increased.

### STATE BUDGET INFORMATION

The Chairman of the Legislative Management assigned the committee various budget-related duties, including monitoring state revenues and expenses.

#### Status of the General Fund and Selected Special Funds

The committee received a Legislative Council report on ongoing general fund revenues and appropriations and the potential 2021-23 biennium revenue shortfall. Ongoing general fund revenues have been less than ongoing general fund spending since the 2015-17 biennium.

The committee received an update regarding oil and gas tax revenues from the Department of Mineral Resources. According to the report, the core area of the Bakken has oil inventory for the next 2 to 5 years.

The committee received updates regarding the status of the general fund and selected special funds. The following is the status of the 2019-21 biennium general fund budget from September 1, 2020, through July 31, 2020:

Unobligated general fund balance - July 1, 2019		\$65,000,000
Add		
Total general fund revenue collected through July 31, 2020		3,154,504,653
Remaining forecasted revenues		1,772,773,763
Balance obligated for authorized carryover from the 2017-19 biennium		130,404,813
Total estimated available		\$5,122,683,229
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		\$148,821,250

Through July 31, 2020, actual general fund revenues, in total, were \$104.3 million, or 3.4 percent more than estimated and the estimated 2019-21 biennium ending balance as of July 2020 was \$148.8 million, which was \$104.4 million more than estimated. Through May 31, 2020, the budget stabilization fund balance was \$717.2 million, which was \$8.8 million less than the maximum authorized balance of \$726 million due to investment losses.

#### Online Sales Tax Collections

The committee received information from the Tax Commissioner regarding an update on sales tax collections from online sales. The committee was informed 6,288 out-of-state businesses that sell online to North Dakota residents had registered with the state to comply with state law. The total sales tax collections from remote sellers since June 21, 2018, through February 5, 2020, were \$37 million, of which \$28.05 million was the state's portion and \$8.95 million was the local portion. According to the report, marketplace sellers are companies that sell products on behalf of other retailers, such as Etsy and Amazon. 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 was the state's portion and \$1.68 million was the local portion.

### OTHER REPORTS

The committee receive other reports, including:

- A report from DEQ regarding the department's petroleum tank release program and why fees cover only 50 percent of the cost of the program. The department reported that during the 2019 legislative session, the department had proposed funding in the petroleum tank release compensation fund cover 100 percent of the petroleum tank program costs; however, the 2019 Legislative Assembly provided funding for the petroleum tank program using 50 percent from the general fund and 50 percent from the petroleum tank release compensation fund. The department is reviewing the petroleum tank program rules, the Century Code provisions, the fee structure, and the petroleum tank fund balance to propose changes for consideration by the 2021 Legislative Assembly.
- A report from the Department of Mineral Resources regarding an update on oil and gas activity in the state. The committee was informed that on average, an oil rig can drill a 20,000-foot oil well in 10 days.

- Reports from the Legislative Council staff relating to:
  - Ongoing general fund revenues and appropriations and the projected ongoing revenue shortfall for the 2021-23 biennium general fund budget;
  - Oil and gas tax revenues; and
  - 2019-21 agency compliance with legislative intent.

# HEALTH CARE COMMITTEE

The Health Care Committee was assigned four studies.

Section 3 of House Bill No. 1106 (2019) directed a study of ways the state may be able to positively affect the current trend of health insurance premium rates increasing, with a focus on the high-risk and subsidized markets. The study must be solution based to reduce costs and may include consideration of whether a strict managed care model might be effective.

Section 17 of Senate Bill No. 2010 (2019) directed a study of the feasibility and desirability of state guaranteed issue provisions for health insurance. The study must include consideration of protections for individuals with pre-existing conditions and consideration of whether to restructure the Comprehensive Health Association of North Dakota.

Section 48 of Senate Bill No. 2012 (2019) directed a study of the delivery of health care in the state. The study must review the needs and future challenges of the North Dakota health care delivery system, including rural access to primary health care, the use of emergency medical services, strategies to better serve residents, and the role of health care services in the future development of the state.

Section 3 of Senate Bill No. 2317 (2019) directed a study of the State Department of Health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the State Department of Health.

In addition to its study responsibilities, the committee was charged with receiving the following six reports:

- A report from the State Fire Marshal each interim on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes (North Dakota Century Code Section 18-13-02(6)).
- A report from the Department of Human Services (DHS), State Department of Health, Indian Affairs Commission, and Public Employees Retirement System before June 1 of each even-numbered year on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes (Section 23-01-40).
- A report by the State Department of Health before June 1 of each even-numbered year, regarding progress made toward the recommendations provided in Section 23-43-04 regarding the stroke centers and stroke care and any recommendations for future legislation (Section 23-43-04).
- A report before July 1, 2020, from the State Department of Health on the status and progress of implementing a public awareness campaign to provide information, public service announcements, and educational materials regarding abandoned infants and approved locations for abandoned infants (2019 House Bill No. 1285, § 2).
- A report from the Insurance Department regarding a detailed analysis of health care in the state (2019 Senate Bill No. 2010, § 15).
- A report before July 1, 2020, from the State Department of Health regarding the implementation of innovation waivers for health facilities construction or renovation projects, waivers for basic care facilities, and review of construction, renovation, or construction and renovation projects (2019 Senate Bill No. 2317, § 4).

Committee members were Representatives George Keiser (Chairman), Dick Anderson, Gretchen Dobervich, Clayton Fegley, Jim Kasper, Mike Lefor, Lisa Meier, Marvin E. Nelson, Bob Paulson, and Robin Weisz and Senators Dick Dever, Kathy Hogan, Judy Lee, Tim Mathern, Dave Oehlke, Kristin Roers, and Shawn Vedaa.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## HEALTH INSURANCE PREMIUM TREND STUDY Legislative History

House Bill No. 1106 was introduced at the request of the Insurance Commissioner. Sections 1 and 2 of the bill directed the Insurance Commissioner to apply for a federal Affordable Care Act (ACA) Section 1332 Innovation Waiver to establish an invisible reinsurance pool for the individual health insurance market to limit the amount of risk insurance companies assume for the high-risk North Dakotans the companies insure.

The goal of the invisible reinsurance pool is to reduce health insurance premiums in the individual market, making insurance more affordable, while protecting insurers from unpredictable high-cost claims that significantly contribute to the rising cost of health insurance. This is accomplished by using a reinsurance mechanism to help fund high-cost claims. The Insurance Commissioner testified the invisible reinsurance pool should result in double digit decreases in the cost of health insurance in the individual market, resulting in more individuals staying in the market, some individuals who left the market due to unaffordability of health insurance returning to the market, and more insurers being willing to write policies in North Dakota counties. Ultimately, the invisible reinsurance pool is intended to help stabilize the individual health insurance market in the state.

Section 3 of the bill, which provided for this study, was added to the bill by the House, as was Section 4, which provides for an expiration date of December 31, 2021. The legislative history indicates a goal of the study is to look at long-term solutions to the problem of the trend of increasing health insurance premiums. In addition, Section 15 of Senate Bill No. 2010, directs the Insurance Department to assist the committee with the study and to conduct a detailed analysis of health care in the state.

## **Background**

Premium rates for the individual health insurance market have continued to increase under the ACA. In May 2019, the Kaiser Family Foundation published the report *Individual Insurance Market Performance in 2018*. On average, premiums per enrollee grew 26 percent from 2017 to 2018, while per-person claims grew only 7 percent.

### **Cost-Sharing Reduction Subsidies**

On October 12, 2017, President Donald Trump signed an executive order terminating cost-sharing reduction (CSR) subsidies. The CSR subsidy is the smaller of two subsidies paid under the ACA. The CSR subsidy was paid from 2013 to 2017 to insurance companies on behalf of eligible enrollees in the ACA earning 100 to 250 percent of the federal poverty level to reduce copayments and deductibles. The report attributes this growth in 2018 premiums in part to the loss of the CSR subsidy payments, as insurers are required by law to provide cost-sharing subsidies to eligible enrollees but are no longer being reimbursed by the federal government.

One concern about rising premiums in the individual market is the increased premiums may cause healthy enrollees to drop out of the market instead of paying the high premium rates. Although most ACA exchange enrollees are subsidized, and therefore sheltered from paying premium increases, those enrolling off-exchange pay the full increase in premium. However, despite this dynamic, the average number of days individual market enrollees spent in the hospital in 2018 was slightly lower than inpatient days in the previous 3 years.

### **Health Care Expenditures**

Health care expenditures drive health insurance premiums. The following are the top five drivers of health care cost increases reported by health insurance carriers for 2017:

1. Prescription drugs;
2. Physician services;
3. Outpatient services;
4. Mental health and chemical dependency services; and
5. Diagnostic imaging.

### **Managed-Care Model**

Managed care is a health care delivery system organized to reduce the cost of providing health care and providing health insurance while improving the quality of that care. Managed care can take several forms, including integrated delivery systems, exclusive provider organizations, preferred provider organizations, and health maintenance organizations.

During the 2017-18 interim, the Health Care Reform Review Committee studied options to operate the state's public benefits programs as managed care. Although the committee studied this topic in depth, the committee did not make any legislative recommendations to direct public benefits be provided through a managed-care model.

## **Testimony**

### **Social Determinants of Health**

The committee received testimony regarding the state's role in addressing gaps in social determinants of health. The Department of Human Services enables access to social determinants of health services when community resources are insufficient.

The committee received testimony regarding a local service delivery method and related programs provided through Lutheran Social Services of North Dakota which are helping address a variety of the social determinants of health.

The committee received testimony on the impact of human behavior on health and health care. The committee received a presentation on the Mutual Accountability and Information Therapy Program, which combines human factors and systems engineering, web technology, and behavior science to improve health and lower overall medical costs by tapping into the doctor-patient relationship via aligned incentives, promoting health literacy, rewarding compliance, and dignifying all parties. The Mutual Accountability and Information Therapy Program is implemented through adoption by health insurers that in turn offer aligned financial incentives to both beneficiaries and doctors for accessing the program's digital health website during each office visit to hold one another accountable for completing the program's information therapy process. The process is described as a unique method proven to nudge an improvement in health behaviors, lowering hospitalizations, emergency room visits, and costs, which in turn produces a return on investment for the insurer.

### **Insurance Department**

The committee received periodic updates on the status of the Insurance Department's submission of an ACA Section 1332 Innovation Waiver to implement a health insurance reinsurance program. On July 31, 2019, the Insurance Department received federal approval of the state's Section 1332 Innovation Waiver submission.

The committee received a preliminary version of the report *Private Health Insurance Market Report 2014-2018*, prepared by a consultant for the Insurance Department. The report provides findings regarding health-spending costs for health insurance plans in the state for the period 2014 through 2018. The report used information gathered from the top 99 percent of health insurers by premium in the state through a data request from the department. The report provided:

- The percentage of the North Dakota population uninsured has been between 7 and 8 percent for the past 5 years (2014-2018).
- In 2018, North Dakota did not allow carriers to refile plan rates due to the federal government's decision to defund CSRs.
- Total individual market membership has decreased every year from 2016 to 2018, likely driven by large rate increases.
- An analysis of the top drivers of higher and lower health care costs shows population change, physicians, inpatient hospital, and outpatient hospital as major drivers of lower health insurance costs. On a net basis, the drivers of lower health insurance costs outweigh the drivers of higher health insurance costs.

The report identified the following findings regarding hospital costs:

- On a per-capita basis, hospital expenses in North Dakota were highest in the nation in 2017, and the hospital expenses growth rate of about 8 percent per year since 2010 was among the fastest in the country.
- That 8 percent growth was comprised of a 1.5 percent growth in utilization and about 6.5 percent growth in unit costs between 2010 and 2019.
- The hospitals' largest expense is wages and benefits. Among the nine largest hospitals in North Dakota, aggregate wages and benefits grew by about 7 percent annually between 2010 and 2019. This growth, in turn, was comprised of employment growth of about 3 percent annually, and wage and benefit growth per employee of about 4 percent.
- North Dakota's average wage per full-time equivalent employee was about \$90,000 in 2018, and wage growth also was among the fastest in the nation between 2010 and 2018.
- Several North Dakota hospitals are near the Minnesota border, which indicates these hospitals may be net importers of patients with the potential to increase measures of North Dakota "per resident" costs.

The report identified the following findings regarding insurance costs:

- Individual market premiums rose by about 10 percent in 2018, with an estimated 15 percent increase in 2019. However, premiums fell in 2020 by about 9 percent due to the establishment of North Dakota's reinsurance program. Premiums in the small group and large group markets have been slightly more stable, growing by roughly 4 to 6 percent per year on average in recent years.
- Despite higher than average hospital costs, North Dakota's premium levels compare favorably with those of other states.

- There are several possible explanations for North Dakota's lower-than-average premium costs.

North Dakota's prescription drug claims have been moderate.

The state's insurers have had lower than average administrative costs, although those costs in North Dakota rose rapidly in the 2014-2018 period.

North Dakota's individual market demographics are more favorable than most other states. A federal study of enrollment in 2017 set North Dakota's enrollment of children under age 18, who collectively tend to have lower claims costs than older enrollees, at 60 percent higher than the national average, while enrollment of people aged 35-64, who tend to have higher claims costs, was 12 percent less than the average nationally.

North Dakota's health plans have relatively high average deductibles compared with other states. In the individual market, it is estimated deductibles average more than \$4,000.

The report included a variety of policy alternatives, recognizing not all the alternatives will work in the state and some may contradict one another. Under the heading of utilization and case management the following policy alternatives were identified:

- Benchmark plan revisions - Mandate optimized medication plans;
- Private insurance (group) mandate - Optimized medication plans;
- Medicaid integrated health homes;
- Medicaid strict managed care/value-based benefit design;
- Other options:
  - Limit Medicaid Expansion to 100 percent of poverty; and
  - Reform Medicaid Expansion as an exclusively managed care model.

Under the heading of prices, coverage, and insurance initiatives, the following policy alternatives were identified:

- Cap out-of-network payment rates;
- Private reinsurance - ACA Section 1332 Innovation Waiver amendment; and
- Telehealth improvements.

Under the heading of transparency, the following policy alternatives were identified:

- Direct to consumer pricing - Disclosure of consumer prices; and
- Right to shop.

Under the heading of program integrity, the following policy alternatives were identified:

- Medicaid integrity audit;
- State group health integrity audit;
- State group health waiver or "opt-out"; and
- Coordination of benefits and identifying third-party liability.

Under the heading of crisis and pandemic planning, the policy alternative of hospital and insurer own risk insolvency assessment was identified.

The conclusion of the report provided the underlying medical cost drivers in North Dakota include rapid growth in hospital operating expenses as well as growth in average length of stay for patients and admissions. Insurers' administrative costs also grew rapidly in recent years, although the costs remain near national averages.

The committee received testimony in response to the report. A representative of hospitals testified hospital prices do not drive prices, as prices in North Dakota are set by Medicare, Medicaid, and the dominant commercial insurer.

In addition, the representatives of the hospitals have several concerns regarding the data used and the conclusions drawn in the report. It was asserted policy recommendations of the report do not correlate with the data.



The committee received testimony in opposition to the report's suggestions to make cuts to the Medicaid Expansion program. While cutting Medicaid Expansion payments to health care providers may save \$5 to \$8 million in general funds as the report points out, the recommendations do not acknowledge the loss to the North Dakota health care system of \$200 million in federal funds. It was argued although Medicaid Expansion represents a major impact on North Dakota's economy, if Medicaid rates do not provide fair reimbursement, the cost must be paid by the remaining users of the system and hospitals will close.

The committee received testimony in opposition to the report recommendations that the state set maximum hospital rates in the private insurance market and in the state employee plan by limiting the amounts payable to out-of-network health care providers to a percentage of Medicare rates. The testimony noted the recommendations fail to understand hospitals and physicians largely participate in all networks and North Dakota does not have an out-of-network, surprise billing problem, as in other states. Additionally, it was noted these recommendations fail to recognize the unique market in North Dakota in which hospitals do not have negotiating power with the dominant insurer and rate caps simply would allow the dominant insurer to further lower its rates.

The committee received testimony hospitals are in the middle of a storm due to the Coronavirus (COVID-19) pandemic. Hospitals have suffered catastrophic financial losses due to the pandemic. Hospitals are not able to sustain a loss of this magnitude and continue to provide the care. It was noted now is not the time to reduce coverage or reimbursement.

The committee received testimony regarding the report from a representative of a consortium of hospitals in the state. According to the testimony, North Dakota's health care system has the unique challenge of delivering care in one of the most rural parts of the country. North Dakota hospitals provide the same advanced medical services offered in urban areas, competing for the same medical professionals and investing in the same technology--the two biggest drivers of health care costs--all while serving a much smaller population.

Testimony in support of managed care indicated the remedy to the rising cost of health care is not government regulations or price capping. It was argued real solutions are found in rethinking the way care is delivered and the health care industry must move from fee-for-service to quality-based payments. To change provider behavior, it is necessary to change the way the health care industry is incentivized to take care of patients--pay doctors and nurses to keep people out of the hospital, not to put people in the hospital.

The committee received testimony in support of moving Medicaid Expansion and traditional Medicaid to a higher level of managed care, in support of expanding the use of telemedicine, and in support of pursuing medication adherence protocols.

Testimony regarding the report suggested improvements may include recognizing economies of scale, consideration of the financial implications of chronic diseases, and consideration of the variances in Medicare reimbursement rates from state to state.

Testimony from representatives of DHS expressed agreement with the hospital and insurer trends described in the report. The testimony noted because the hospitals' data was used in the report, there should be no more debate about if hospital rates are high. The testimony suggested progress can be made by shifting the discussion to how the state can drive more value into the Medicaid program through public policy.

Testimony from a health care insurer in support of the report indicated the report is an opportunity to improve the delivery of health care in the state.

### **Drivers Affecting Premium**

Four health insurers in the state provided testimony regarding the drivers affecting health insurance premiums.

The committee received testimony regarding pooling of risk among similar populations and subsidization within risk pools, including major considerations and assumptions relating to the fully insured line of business rating, the renewal and underwriting calculation process for the fully insured line of business, and the self-insured group rating.

Testimony regarding increases in medical costs and utilization trends indicated increased utilization in the individual market drove higher per-member-per-month costs, and claims costs nearly doubled from 2009 through 2015, with a 38 percent increase in 2014 and nearly 30 percent growth in 2015. Conversely, the large and small group markets were relatively stable during this time frame.

According to the testimony, significant increases in the cost of specialty drugs appear to drive overall cost increases, while insurers paid an increasing share of pharmaceutical costs. In the large and small group markets, the overall cost

of pharmaceuticals increased by 6 to 8 percent in both 2014 and 2015. However, in the individual market, pharmaceutical costs increased by about 25 percent in both 2014 and 2015.

In the large and small group markets, the per-member-per-month cost of specialty drugs increased 30 percent in 2014 and more than 20 percent in 2015. The percentage of pharmaceutical costs paid by insurers increased from 63 to 73 percent in 2014, increasing to 80 percent in 2015.

The projected medical trend for 2020 is expected to be consistent with that for 2019, which ranged from an increase of 5 to 8 percent. Although the growth in spending for specialty drugs is expected to remain high, spending growth for prescription drugs overall has leveled and is expected to be similar to or slightly higher than medical spending growth.

### **Alternative Delivery Models**

The committee received testimony regarding accountable care organizations, which are networks of physicians and hospitals which share a financial and medical responsibility for providing coordinated care to patients in hopes of limiting unnecessary spending. Additionally, the committee received testimony regarding BlueAlliance, a value-based program implemented by a North Dakota insurer.

### **Health Insurance Plans**

Testimony indicated the annual premium trend for the last several years has been an increase of 6 to 8 percent. The reasons for this increase include advancements in medical technology and treatment options that are exponentially increasing or decreasing costs in an unpredictable manner, and unknown variables the health plans need to anticipate, such as new treatment options that will be introduced to the market.

According to the testimony, prescription drug costs are on the rise. The timing of when new prescription drugs hit the market is critical, and health plans constantly are monitoring the status of brand conversions to generic and other medications in development stage which may hit the market. It was asserted future variables that may impact premium trend include new prescription drugs, new medical treatment, social determinants of health, utilization management, health care literacy, new state and federal rules and regulations, benefit mandates, and new efficiencies, such as telehealth.

According to testimony, multiple factors can be used to help decrease premium cost, including payment models, price transparency, personal responsibility, and lifestyle and wellness.

### **High-deductible Health Plans**

The committee received testimony regarding high-deductible health plans, including information regarding the prevalence among employers, enrollment among employees, premiums for family and single coverage, and deductibles for high-deductible health plans and non-high-deductible health plans.

For small employers, enrollment in high-deductible health plans grew in the early 2000s, but enrollment began to level starting in the early 2010s. The prevalence of high-deductible health plans for mid- and large-employers continued to expand for more than a decade but appears to be leveling in the past few years.

Family premiums for high-deductible health plans versus non-high-deductible health plans have increased by very similar percentages over more than a decade. Single premiums for high-deductible health plans versus non-high-deductible health plans have increased by similar percentages over more than a decade.

High-deductible health plan deductibles have increased by about 44 percent over more than a decade. However, after considering employer contributions, the deductible has been even steeper, at 62 percent, meaning employer contributions have not kept pace with deductible increases in terms of percentage. Non-high-deductible health plan deductibles have increased by approximately 158 percent over the same period. In dollar terms, the actual dollar changes in deductibles have moved by similar amounts.

### **Drug Cost**

Testimony from a representative of the health insurance sector expressed a need for more transparency regarding drug pricing. It was argued drug manufacturers are permitted to operate in a "black box" with respect to pricing, free from public view and unaccountable to market forces. However, health plans are subject to multiple layers of state and federal regulations that provide a picture of how premiums are earned and spent.

Testimony was received in support of including drug wholesalers in any efforts to improve drug cost transparency and to require reporting by pharmacy service administration organizations.

The committee received testimony in support of drug pricing transparency legislation that would:

- Limit the disclosure of proprietary or trade secret data and limit publication of nonpublic data, or data unrelated to the price of the prescription drug.
- Place pharmaceutical manufacturers on similar footing with respect to financial disclosures as other sectors of the health care industry.
- Provide advance notification of excessive significant drug price increases by pharmaceutical manufacturers.

The committee received testimony other states, such as California, Minnesota, Oregon, and Texas, have enacted drug cost transparency laws. Of the \$344 billion total cost of drugs in 2018, approximately one-half the cost of drugs, \$166 billion, was rebated.

A representative of AARP testified in support of addressing the high cost of drugs by improving transparency of drug manufacturers, pharmacy benefit managers, and insurance companies.

Testimony was received in support of drug cost transparency legislation that provides for the Insurance Department to collect and publish data, in part, because insurance companies are more comfortable reporting to the Insurance Department than the State Board of Pharmacy.

Testimony in opposition to drug cost transparency legislation indicated such legislation:

- Would not help patients;
- Could threaten access to needed prescription drugs;
- Could chill the innovation of future treatments;
- Would mandate additional disclosure of proprietary information and would not benefit patients or decrease health care costs;
- Would improperly target rebates as increasing the cost of drugs;
- Does not recognize that drug costs are the only costs in the health care system which diminish over time due to market changes; and
- Does not adequately protect proprietary or confidential information.

The committee reviewed federal Food and Drug Administration regulations regarding interchangeable biosimilar drugs. A biologic is a drug that generally comes from a living organism, such as yeast and bacteria, which differs from a conventional drug that commonly is made from chemicals. A biosimilar is a biologic that is highly similar to the original biologic and has no clinically meaningful differences from the original biologic. An interchangeable biosimilar is a biosimilar that meets additional federal requirements established in 2019, allowing substitution by a third party for the reference biologic. To date, no biologic drugs have been deemed interchangeable.

The committee considered whether there are barriers in state law to the dispensing of biosimilar drugs and received testimony regarding the prescription of interchangeable biosimilar drugs under Section 19-02.1-14.3. The testimony indicated support of biosimilar legislation if the language is consistent with the notice requirements in other states, such as a 72-hour notice.

## **Considerations**

### **Drug Cost Transparency**

The committee considered a bill draft that would have directed the State Board of Pharmacy to collect and publish data regarding drug costs.

### **Biosimilar Drugs**

The committee considered a bill draft to remove possible barriers to the substitution of an interchangeable biosimilar for a reference biologic under Section 19-02.1-14.3. The committee considered a version of the bill draft that would have abolished the 24-hour notice requirement for substitution of an interchangeable biologic.

The committee considered a version of the bill draft that would have provided a 5-business-day period within which a pharmacist shall notify the prescriber of a substitution of an interchangeable biologic and would have clarified how the notice could be provided by electronic means.

The committee received testimony from a representative of the North Dakota Medical Association in opposition to a bill draft to amend Section 19-02.1-14.3.

## Recommendations

The committee recommends [House Bill No. 1032](#) directing the State Board of Pharmacy to collect and the Insurance Department to publish data regarding prescription drug costs.

The committee recommends [House Bill No. 1033](#) to require notice within 2 business days if a pharmacist substitutes an interchangeable biosimilar for the reference biologic and to clarify how notice may be provided by electronic means.

## HEALTH INSURANCE GUARANTEED ISSUE STUDY

### Legislative History

Senate Bill No. 2010, the Insurance Commissioner's appropriation bill, was amended by the House to create a new section to Chapter 26.1-36, which would have prohibited an accident and health insurance policy issued under this chapter from taking into account any pre-existing condition of an insured or applicant, including waiting periods, refusal of coverage, and ratesetting.

This section was replaced in the Conference Committee with language that provides for a study of the feasibility and desirability of state guaranteed issue provisions for health insurance.

### Background

In the United States and other developed nations, population health care spending is highly concentrated. In any given year, the healthiest 50 percent of the population accounts for less than 3 percent of total health care expenditures, and the sickest 10 percent account for nearly 66 percent of population health spending. The risk nature of the private health insurance pool is that premiums paid by most enrollees, who have low claims costs, help pay claims for the small share of enrollees with high claims costs.

The membership of who is included in the high-cost and low-cost groups changes from year to year. Most people are healthy most of the time; however, illness and injury can and do onset unexpectedly. Some high-cost conditions, such as hemophilia or HIV, persist and require treatment for extended periods, whereas, other high-cost conditions may improve or resolve, allowing a patient to return to low annual health care spending. Annually, among the 50 percent least expensive people, 73 percent will remain in that low-cost group for a 2<sup>nd</sup> year. Of the people in the most expensive 10 percent of the population in a year, only 45 percent will be in that group the following year.

### Medical Underwriting

Guaranteed issue is a term used in health insurance to describe a situation in which a policy is offered to any eligible applicant without regard to health status. Before private insurance market rules under the ACA, which became effective in 2014, health insurance sold in most states was medically underwritten. Medical underwriting is the process used by insurers to evaluate the health status, health history, and other risk factors of applicants to determine whether and under what terms to issue coverage. Medical underwriting can apply to an entire group or to an individual. Medical underwriting could result in an applicant being declined and could result in adverse underwriting practices.

Over the years, various state and federal regulations have been implemented to limit medical underwriting for major medical coverage in the individual and small group market. Under the ACA, medical underwriting for new enrollees is no longer used for major medical coverage in the individual and small group market.

Before 2014, insurers in most states could consider an individual applicant's health status to determine whether the applicant was eligible for coverage and, if eligible, whether to include pre-existing condition exclusions or increased rates based on health status. Since 2014, an insurer may not consider the applicant's health status other than consideration of tobacco usage.

Before 2014, in the small group market, insurers in 38 states, including North Dakota and the District of Columbia, could base a small group's premiums on the overall health status of the group. Although individual employees could not be charged differing premiums based on health status or denied eligibility for coverage, employees who did not have continuous creditable coverage could have pre-existing condition exclusion periods. The ACA discontinued pre-existing condition exclusion periods and the practice of basing a small group's total premiums on the health history of the group's members.

The rules for large groups are different, even with the implementation of the ACA. Most large groups and many medium-sized groups opt to self-insure rather than purchase coverage from an insurer. However, when a large group buys coverage from an insurer, premiums can be based on the group's overall claims history which means less healthy groups can be charged higher total premiums than healthier groups. Individual employees within a group are covered on a guaranteed issues basis and are not charged different rates based on the individual's medical history.

Although medical underwriting no longer exists for new enrollees in the individual market and for new small group plans, the several types of coverage that use medical underwriting are called excepted benefits under the ACA. Excepted benefits include short-term health insurance and supplemental insurance products, such as dental plans, vision plans, accident supplements, critical illness plans, and fixed indemnity plans. Most excepted benefits are designed to supplement major medical coverage, rather than replace the coverage.

Medical underwriting may result in a policy with pre-existing condition exclusions or a premium higher than the standard rate. Medical history that results in adverse medical underwriting may include acne, allergies, anxiety, asthma, basal cell skin cancer, depression, ear infections, fractures, high cholesterol, hypertension, incontinence, joint injuries, kidney stones, menstrual irregularities, migraine headaches, being overweight based on a high body mass index, restless leg syndrome, tonsillitis, urinary tract infections, varicose veins, and vertigo.

### **Affordable Care Act Legislation**

The case of *Texas v. Azar*, 340 F.Supp.3d 579 (N.D. Tex., 2018), was filed in federal court in February 2018 by Texas and 19 other states, including North Dakota. This lawsuit, which builds on the repeal of the ACA's individual mandate, which was part of the 2017 federal tax reform law, argued because the individual mandate was an essential part of the ACA, the entire ACA should be invalidated. On December 14, 2018, a federal district court judge in Texas issued a ruling holding the ACA in its entirety is unconstitutional; however, since the court did not issue an injunction, immediate compliance is not required. On July 8, 2019, the Fifth Circuit Court of Appeals held hearings on the constitutionality of the individual mandate in *Texas v. Azar*.

This case will be heard by the United States Supreme Court on November 10, 2020, and the ACA remains in effect while this case makes its way through the court system. However, if the district court decision is upheld, the ACA's limitations on medical underwriting will cease to exist and absent new federal legislation, states will again rely on state law to regulate medical underwriting.

### **High-Risk Pools**

The ACA contains various provisions with various effective dates. Title 1 of Subtitle B of Section 1101 of the ACA created the temporary high-risk pool program, which was named the Pre-existing Condition Insurance Plan. The goal of the Pre-existing Condition Insurance Plan was to make health insurance quickly available to uninsured people who had pre-existing conditions. This federal high-risk pool provision became effective June 21, 2010, with individual policies offered for sale in all states by September 2010. This program remained in effect until January 1, 2014, at which time it was replaced by policies sold through the health benefit exchanges, as market changes resulted in pre-existing conditions no longer preventing people from qualifying for private health insurance coverage.

Under the ACA, each state had the choice of running its own high-risk pool that complied with the ACA requirements or deferring to the federal government and allowing the federal government to run the new program. Twenty-seven states chose to run state programs, and 23 states and the District of Columbia had the federal government run the program. North Dakota chose to have the federal government run the state's ACA high-risk pool, while providing the state's high-risk pool--Comprehensive Health Association of North Dakota--continued to operate separately.

North Dakota is one of 35 states that implemented a high-risk health insurance pool before 2010. The National Conference of State Legislatures reports as of 2010, more than 200,000 people were served by these state high-risk health insurance pools.

### **Testimony and Committee Considerations**

The committee received testimony that before the ACA, people were locked into their jobs because they needed to ensure employer group health insurance coverage. According to the testimony, every American deserves affordable, comprehensive health coverage--regardless of income, employment status, health status, or pre-existing conditions. No one should be denied or priced out of affordable health coverage because of health status. The ACA pre-existing condition protections were implemented in cooperation with provisions to incentivize broad enrollment and continuous coverage and a well-balanced risk pool. Additional safeguards are needed in tandem with pre-existing condition protection for the market to be stable and function properly. Most critically, broad-based individual participation is critical for an affordable and stable individual insurance marketplace. It was argued premium tax credits and the infrastructure for consumers to shop and purchase health insurance are crucial to ensuring North Dakotans who do not have employer-sponsored coverage, Medicaid, or Medicare can find and afford coverage. Without these elements, North Dakota's market may deteriorate because individuals and families drop coverage because it is unaffordable.

The committee received testimony in support of including a contingent effective date in any legislation the committee might recommend so the bill would not go into effect unless the ACA is repealed or found unenforceable.

The testimony received by the committee raised the concern of the consequences of lapses in coverage and people choosing to remain uninsured unless or until a health emergency arises.

The committee considered legislative language submitted by stakeholders. The committee worked with the Insurance Department in preparing bill drafts for consideration by the committee.

The committee considered two versions of a bill draft addressing health insurance guaranteed issue. One version of the bill draft would have provided for guaranteed issue and prohibited pre-existing condition provisions in individual health insurance plans.

### **Recommendation**

The committee recommends [Senate Bill No. 2029](#) that provides for guaranteed issue for small employer health insurance plans and individual health insurance plans, providing limited pre-existing condition provisions in cases of lapse of coverage.

## **HEALTH CARE DELIVERY STUDY**

### **Legislative History**

Senate Bill No. 2012, the DHS appropriation bill, was amended by the Senate to provide for a Legislative Management study of health care delivery in the state. The Senate Appropriations Committee received testimony from multiple stakeholders, including DHS and the University of North Dakota School of Medicine and Health Sciences Center for Rural Health, regarding critical access hospitals, rural health care, and implementation of the ACA, including Medicaid Expansion.

### **Background**

During the previous four interims, the Legislative Management has studied the state's health care delivery system. Typically, these studies have included or been accompanied by a study of implementation of the ACA. This interim, although the study did not prohibit considering how the ACA may impact the delivery of health care, the primary focus was the delivery of health care.

The broad directive to study the delivery of health care in the state required the study to include a review of the needs and future challenges of the state's health care delivery system, including:

- Rural access to primary health care;
- Use of emergency medical services;
- Strategies to better serve residents; and
- The role of health care services in the future development of the state.

Although the study was not limited to rural health care, according to the North Dakota Census Office, 39 of the state's 53 counties are classified as completely rural, 3 as mostly rural, and 11 as mostly urban. North Dakota is one of five states classified as frontier under the ACA.

## **Testimony and Committee Considerations**

### **Rural Health**

The committee received testimony regarding the following 10 key factors to understanding rural health in North Dakota:

1. Demographics drive health conditions, services, demand, and supply.
2. Networking, collaboration, and partnerships are fundamental.
3. Equity and interdependence are ways to think about rural communities and rural health.
4. You cannot focus on rural health without focusing on the community.
5. Rural health providers--hospitals, clinics, long-term care, emergency medical services--are vulnerable.
6. Rural health is more than just rural hospitals, primary care clinics, emergency medical services, public health, and infrastructure. Rural health also refers to the health of the population.
7. Quality of rural health care is high.
8. Health workforce may be even more problematic in rural areas than larger communities.
9. Rural health providers are up to date with technology and telehealth.

10. Healthy policy is critical to rural health.

The committee also received testimony regarding the demographics of the state. With a population of over 760,000, North Dakota is the fourth youngest state, with a median age of 35 years. Oil counties and urban counties continue to grow, but most other rural counties have experienced marginal growth or even population loss. Demographics influence rural health care through patient base, employment base, the type and availability of services, volunteer base, and the distance to services, work, day care, and home.

The testimony emphasized rural health care providers are vulnerable. A key point in rural North Dakota is the hospital is more than a hospital. If a rural hospital closes there is a loss of primary care, emergency medical services, and in many cases nursing homes and other elder care services. It was noted rural health serves a more vulnerable population:

- 63 percent of people 65 and older live in rural North Dakota, with approximately 39 percent of critical access hospital inpatient base being Medicare.
- 46 percent of North Dakota veterans are rural residents.
- More than 9 percent of rural North Dakotans have not finished high school, compared to 6.2 percent of urban North Dakotans.
- Distance, weather, and transportation are factors contributing to health disparities for rural North Dakotans.

According to the testimony, the state's health workforce is not only experiencing shortages but also maldistribution. However, there are efforts being taken through the educational system and by the rural communities to address these workforce and distribution issues.

In terms of access to technology, the state is heavily wired. Technology connects rural communities not only to tertiary hospitals, but to the world. Technology allows rural clinics to have electronic medical records or electronic health records, telemedicine, and telepharmacy.

The testimony indicated federal and state health policy drives rural health. The committee was informed federal policies on the horizon include global budgets, community outpatient hospitals and rural emergency care hospitals, and Medicare reimbursement methodologies for rural providers.

The committee received a summary of a 2017 survey of critical access hospital chief executive officers' perceptions of issues. Of the 22 issues identified in the survey, the following are the top 12 issues listed as a problem, moderate problem, or severe problem:

1. Access to mental health inpatient services (94.5 percent);
2. Access to substance use disorder inpatient treatment services (92.7 percent);
3. Access to substance use disorder outpatient treatment services (91.4 percent);
4. Access to mental health outpatient services (86.2 percent);
5. Transportation of patients with mental health or substance use disorders to treatment services (80.5 percent);
6. Hospital reimbursement - Medicaid (69.4 percent);
7. Impact of the under-insured (69.4 percent);
8. Impact of the uninsured (68.6 percent);
9. Service area economic change (66.7 percent);
10. Hospital reimbursement - Third-Party Payer (63.9 percent);
11. Service area population change (61.1 percent); and
12. Hospital reimbursement - Medicare (50 percent).

### **Critical Access Hospital Finances**

The committee received a summary of the report on the 2018-19 critical access hospital financial analysis. The report provided:

- Patient Revenue continues to trend positively:
  - Inpatient revenue continues to trend fairly flat; and
  - Outpatient and clinic revenue experiences the greatest growth;

- Contractual deductions trend proportionate to patient revenue;
- Bad debt and charity care expense increased to the highest level ever, increasing by nearly \$3 million to \$42.7 million this past year;
- Medicaid Expansion accounted for nearly 4 percent of net patient revenue;
- \$24 million in Medicaid Expansion payments to North Dakota critical access hospitals in the past year;
- Eighteen critical access hospitals had a positive operating margin in 2018, compared to 19 in 2017;  
  - Total operating margin for all critical access hospitals was \$8.5 million or 1.4 percent; and
  - Average operating margin was \$234,000;
- Operating expenses have been experiencing modest increases;
- Critical access hospitals incurred \$15 million in contract nursing expenses in 2018;
- 27 critical access hospitals had a positive net margin;
- 7 critical access hospitals are participating in a Medicare accountable care organization; and
- Multiple critical access hospitals are participating in Blue Cross Blue Shield of North Dakota's managed care program, BlueAlliance.

### **Community Paramedic Program**

The Sanford Health community paramedic program in the Fargo-Moorhead community was established as a pilot project in 2015 through a State Department of Health grant. According to testimony, the program initially had one full-time equivalent position but is increasing to three positions. Although the initial focus of the program was on high utilizers of emergency medical services, such as those with chemical dependency and behavioral health issues, the current focus is on filling gaps in health care services. The goal of the program is to prevent unnecessary admissions and readmissions, to lower the cost of care by providing the right level of care at the right time to the right patient, and to improve quality of care of the patients.

### **Telehealth in Schools**

A telehealth school nurse program provided through eCARE provides nurse extender services, primary school nurse services, and behavioral health services to schools. The committee received testimony that although state law does not hinder nurses from performing telehealth, improvements in behavioral health provider licensure requirements could help facilitate telehealth services. Additionally, it would be helpful to have a state law requiring nurse oversight in all schools in the state.

### **Conclusions**

The committee makes no recommendations regarding its study of health care delivery.

## **HEALTH FACILITY CONSTRUCTION AND RENOVATION STUDY**

### **Legislative History**

Senate Bill No. 2317, as introduced, provided for State Department of Health licensure of pediatric subacute care facilities. The bill, as passed, addressed State Department of Health life safety survey determinations for construction and renovation of health facilities licensed by the State Department of Health Division of Health Facilities and department licensure standards for basic care facilities. Additionally, the bill provided for the Legislative Management study and an interim report to the Legislative Management by the State Department of Health regarding implementation of the bill.

The testimony in support of Senate Bill No. 2317 indicated with limited department resources for inspection and project plan approval, small projects are being delayed and, in some instances, losing access to grant funds due to the delays in having project plans approved. The testimony recognized there is a balance between the value of having authorization to avoid expensive and timely noncompliance issues discovered at the completion of a project and the delays in initiating small projects. Additionally, testimony raised the concern it may not be appropriate to have the State Department of Health conducting these project reviews.

Testimony in support of the innovation waiver language indicated the department would like flexibility to approve projects that may not meet the letter of the law, but do not adversely affect health or safety and do not violate federal requirements.



### **Health Facility Construction and Renovation Project Timelines and Innovation Waivers**

Section 1 of Senate Bill No. 2317 amended Section 23-01-37, the law directing the State Department of Health to conduct a life safety survey for all health facilities licensed by the Division of Health Facilities. The law requires the department to conduct the survey during and at the conclusion of a construction, renovation, or construction and renovation project. The 2019 legislation required determinations of projects that do not exceed \$1 million to be made within 60 days of receipt of a complete application. Additionally, the department may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety. The department's survey program may not violate the federal Medicare-certified life safety surveys.

### **Basic Care Facility Licensure Waivers**

Section 2 of Senate Bill No. 2317 amended Section 23-09.3-04, the law directing the State Department of Health to establish standards for basic care facilities. Under this section the department is required to inspect all places and grant an annual license to basic care facilities that comply with the standards established and rules adopted. The 2019 legislation authorized the department to waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.

The testimony in support of Section 2 of Senate Bill No. 2317 indicated because basic care facilities are a creation of state law and are not required to follow the federal life safety survey requirements, the state has more flexibility than it does in conducting Medicare-certified life safety surveys of facilities. Testimony further indicated the State Department of Health sought flexibility in licensing basic care.

### **Testimony and Committee Considerations**

The committee received periodic reports from the State Department of Health on the implementation of Senate Bill No. 2317.

### **Health Facility Construction and Renovation Project Timelines**

The State Department of Health employs four full-time positions and one part-time temporary employee to work on the health facility construction and renovation plan review program. The program is responsible for plan review and monitoring of construction and revocation projects in hospitals, nursing facilities, and basic care facilities.

According to the testimony, due to limited resources and the legislative prioritization of review of plans for smaller construction and renovation projects, the smaller projects are being reviewed before the larger projects.

The department provided an overview of its process for health care facility review. Delayed review and approval processes negatively impact health care leaders' ability to manage capital and human resource investments and can ultimately delay access to care.

The department also provided testimony regarding how neighboring states address plan review for health facility construction and renovation.

The department testified it is implementing a multipronged approach to address concerns over the timeliness of the plan review process. The department will continue to attempt to bolster the program with an additional temporary position as provided through funding included in House Bill No. 1004 (2019), and will continue to explore the innovative approach of utilizing qualified outside vendors found through a request for proposal to aid in the plan review and provide facilities an expedited route in their plan review process. If these approaches are not successful, the department will examine if there is a way to potentially add additional full-time equivalent positions to the program.

Testimony was received in support of the department's multipronged efforts to address timeliness. It was noted the key to better communication, shorter review times, and better alignment between a design team and the department is the ability to continue to have an open dialogue and communication with the department. It was suggested one way to improve open dialogue may include implementation of a process in which there are opportunities during the design phases for the team to sit together and perform a page-by-page review of the plans at multiple points. This collaborative approach would allow the department to better understand the project earlier in the process as well as to raise concerns during design so the design team can implement changes into the drawings during the design phase, thereby streamlining the review process.

### **Waivers**

In response to Senate Bill No. 2317, the department developed internal policies and procedures that went into effect on July 15, 2019, to address the application for an innovative construction, renovation, or construction and renovation project. Additionally, the department developed internal policies and procedures that went into effect on June 14, 2019, to address the application for a waiver of all or a portion of a basic care facility license standard. According to the

testimony, the reason for adopting internal policies and procedures for these waiver projects was that adoption of policies and procedures is quicker than addressing through administrative rules.

The testimony indicated the department's basic care waiver policies are more stringent than Senate Bill No. 2317 provides. Concerns were raised that the adoption of the policies was not transparent, and stakeholders did not have an opportunity for public comment. Committee members also expressed concern regarding the department's strategy of addressing the basic care waiver through agency policy and avoiding public comment. Additional concern was raised the waiver application decision is not appealable.

Representatives of the department testified the department would adopt administrative rules to address the basic care waiver. The rules were drafted, reviewed by industry, and approved by the Health Council. However, due to the response to COVID-19, the adoption of the rules was temporarily halted.

Under the proposed rules, a health care facility may apply for a waiver of state law or rule relating to innovative construction, renovation, or construction with supporting evidence. This waiver would not adversely affect the health and safety of patients, residents, employees, or the general public. The department may deny an innovative waiver request within 60 days of receiving a complete application. If the applicant chooses to proceed, the health care facility has 7 days after receiving the notice to appeal the decision to the State Health Officer, who has 7 days upon receipt of the appeal, to make a final decision. The decision by the State Health Officer, or designee, is final and conclusive. The draft rules require the health care facility to submit a complete and separate waiver application for each law, rule, or construction standard. The draft rules also provide basic care facilities may request a waiver of licensure requirements for specific periods of time, providing compliance with the requirement would result in unreasonable hardship upon the facility, and lack of compliance does not adversely affect the health or safety of the residents. A waiver of licensure requirements also can be provided if the basic care facility does not intend to come into compliance, provided the health or safety of residents is not adversely affected.

### **Conclusions**

The committee makes no recommendations regarding its study of health facility construction and renovation.

### **REPORTS**

#### **Ignition Propensity Standards for Cigarettes**

The committee received a report from the State Fire Marshal on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes.

The committee received the recommendation to correct the language of Section 18-13-02(1)(a) to include "ASTM E2187-04 or the most current standard test method under designation E2187 (Standard test method for measuring the ignition strength of cigarettes)". This change would clarify the current standard should be used and enable the State Fire Marshal's office to enforce the most current and safest standards in place.

#### **Reduction of the Incidence of Diabetes**

The committee received a report from a representative of DHS, the State Department of Health, Indian Affairs Commission, and Public Employees Retirement System on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes.

The report included action plans by each of the parties and identified actionable items through a cross-sector, community-based approach. While none of the contributing entities suggested a need for additional funding for their current workplans, the report provided implementation of the actionable items would best occur at the local level. For that reason, the report suggested creation of a community grant fund specifically for communities and organizations to apply which would support local implementation of diabetes and risk-factor prevention strategies. Additional budget considerations related to action items included:

- The costs associated with the financial burden for individuals in North Dakota is related to the daily choices individuals face which are beyond diabetes care, including access to affordable nutritious food, safe places to engage in physical activity, and out-of-pocket health care costs for prevention and intervention.
- The costs associated with insurance and Medicaid coverage of improved glucose monitoring technology.
- Many schools are ill-equipped without onsite school nurses or access to telehealth school nursing for children with type 1 diabetes requiring insulin. Ensuring all schools have access during the entire school day to nurses through telehealth to assist children with insulin dose calculation would be a cost-effective approach for delivering care.

### **Stroke Centers and Care**

The committee received a report by the State Department of Health regarding progress made toward the recommendations provided in Section 23-43-04 relating to stroke centers and stroke care.

### **Abandoned Infants**

The committee received a report from the State Department of Health on the status and progress of implementing a public awareness campaign to provide information, public service announcements, and educational materials regarding abandoned infants and approved locations for abandoned infants.

Section 50-25.1-15(1)(b) defines "approved location" regarding abandoned infants as a hospital or other location as designated by administrative rule adopted by DHS. The Department of Human Services adopted administrative rules relating to approved locations. The Department of Human Services facilitated meetings with stakeholders to ensure their support and consent as approved locations. As a result of these meetings, the following entities have been added as approved locations that include physical locations as well as on-duty staff members of the following:

- Local public health units;
- Human service zones;
- Regional human service centers;
- Long-term care nursing facilities;
- Children's advocacy centers;
- Emergency medical services operations; and
- Criminal justice agencies.

The committee received testimony to enhance public awareness, the State Department of Health produced 60-second and 2.5-minute public service announcements that explain North Dakota's safe haven law regarding abandoned infants.

According to the report, to develop ongoing public education and training materials to medical providers, law enforcement, and social service agencies, DHS amended an existing contract with Prevent Child Abuse North Dakota, which is working with a vendor to create these materials in consultation with the State Department of Health and DHS.

An educational flyer is in development which includes a medical history form for the infant. These materials will be provided without cost to the public and the staff of approved locations by December 2020.

### **Health Care Analysis**

The committee received a report from the Insurance Department regarding a detailed analysis of health care in the state. This report is addressed in this report under the heading "**HEALTH INSURANCE PREMIUM TREND STUDY**".

### **Health Facility Construction and Renovation**

The committee received a report from the State Department of Health regarding the implementation of Senate Bill No. 2317. This report is addressed in this report under the heading "**HEALTH FACILITY CONSTRUCTION AND RENOVATION STUDY**".

# HIGHER EDUCATION COMMITTEE

The Higher Education Committee was directed to study higher education institutions under the control of the State Board of Higher Education (SBHE).

The committee was delegated by the Legislative Management the responsibility to:

- Receive annual reports from the SBHE regarding the number of North Dakota academic scholarships and career and technical education (CTE) scholarships provided and demographic information pertaining to the recipients, pursuant to North Dakota Century Code Section 15-10-59.
- Receive a biennial report from the University of North Dakota (UND) School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the school, pursuant to Section 15-52-04.
- Receive a report from any tribally controlled community college receiving a grant under Chapter 15-70 detailing grant expenditures and recipient demographics, pursuant to Section 15-70-05.
- Receive a report from the SBHE pursuant to Section 31 of House Bill No. 1003 (2019) regarding the use of funding in each institution's capital building fund line item, the source of matching funds, and each institution's 5-year plan for capital construction spending.
- Receive a report from the SBHE regarding the transfer of appropriation authority among the operations, capital assets, and capital building fund line items within subdivisions 2 through 14 of Section 1 of House Bill No. 1003.
- Receive a report from the Higher Education Funding Formula Review Committee pursuant to House Bill No. 1029 (2019) regarding the committee's review of the higher education funding formula.

Committee members were Representatives Mark Sanford (Chairman), Rick Becker, Larry Bellew, Matt Eidson, Karla Rose Hanson, Richard G. Holman, Dennis Johnson, Donald W. Longmuir, Bob Martinson, David Monson, Gary Paur, and Mike Schatz and Senators Brad Bekkedahl, Robert Erbele, Karen K. Krebsbach, Erin Oban, Larry J. Robinson, and Jim P. Roers.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## BACKGROUND

The Legislative Management has established a Higher Education Committee each interim since 1999. These committees have reviewed higher education funding, expectations of the North Dakota University System, and accountability and reporting measures for the University System. The committees, at times, have gathered input through the use of a higher education roundtable, which consisted of members of the Higher Education Committee and representatives from the SBHE, business and industry, the executive branch, and higher education institutions, including tribal and private colleges.

### University System Information

The University System consists of 11 higher education institutions under the control of the SBHE. Of the 11 institutions, 2 are doctoral-granting institutions, 2 are master's-granting institutions, 2 are universities that offer baccalaureate degrees, and 5 are colleges that offer associate and technical degrees. Bismarck State College (BSC) has received authority to transition into a polytechnic institution that offers baccalaureate degrees in technical fields and Dickinson State University (DSU) has received authority to transition into a dual-mission institution that offers associate degrees and certificates. In addition, the North Dakota Forest Service is administratively under North Dakota State University (NDSU).

## HIGHER EDUCATION STUDY

The Legislative Management directed the committee to study higher education institutions under the control of the SBHE. The study must include:

- Higher education trends, including enrollment, space needs, and distance education, and their impact on higher education institutions and the state;
- Higher education research relating to agriculture, energy, and other sectors, including its economic impact, available funding, and the impact of institution and systemwide administrative structures on research;
- Higher education facilities, including campus and legislative funding expectations and the role of the new three-tier capital building fund program; and

- The role of higher education in meeting the state's workforce needs, including TrainND, dual missions, and interstate cooperation.

### Legislative Appropriations

Legislative appropriations for the 2019-21 biennium for higher education institutions, the North Dakota Forest Service, and the University System office total \$2,999,878,919, of which \$660,517,805 is from the general fund. Of the total general fund appropriation, \$11,850,000 is considered one-time funding. The following is a history of legislative appropriations for higher education since the 1997-99 biennium:

Biennium	General Fund	Special Funds	Total
1997-99	\$306,825,098	\$323,595,863	\$630,420,961
1999-2001	\$334,449,287	\$713,538,799	\$1,047,988,086
2001-03	\$366,953,836	\$80,367,201	\$447,321,037
2003-05	\$364,029,938	\$110,546,775	\$474,576,713
2005-07	\$387,157,893	\$178,552,108	\$565,710,001
2007-09	\$472,036,237	\$165,419,701	\$637,455,938
2009-11	\$593,355,047	\$202,764,364	\$796,119,411
2011-13	\$657,838,539	\$108,817,759	\$766,656,298
2013-15	\$910,632,494	\$177,980,941	\$1,088,613,435
2015-17	\$837,849,212	\$66,644,264	\$904,493,476
2017-19	\$679,438,630 <sup>1</sup>	\$2,059,950,275	\$2,739,388,905
2019-21	\$660,517,805	\$2,339,361,114	\$2,999,878,919

**NOTE:** The special funds amounts for the 1997-99 biennium reflect the appropriation of tuition income. The special funds amounts for the 1999-2001, 2017-19, and 2019-21 bienniums reflect the appropriation of tuition and local funds.

<sup>1</sup>The 2017-19 biennium general fund amount includes \$53.6 million of supplemental funding appropriated by the 2019 Legislative Assembly.

The following is a summary of ongoing and one-time general fund appropriations for the University System since the 2007-09 biennium:

General Fund Appropriations			
Biennium	Ongoing Appropriations	One-Time Appropriations	Total
2007-09	\$443,654,169	\$28,382,068	\$472,036,237
2009-11	\$534,062,895	\$59,292,152	\$593,355,047
2011-13	\$606,525,437	\$51,313,102	\$657,838,539
2013-15	\$679,271,846	\$231,360,648	\$910,632,494
2015-17	\$681,876,059	\$155,973,153	\$837,849,212
2017-19	\$613,242,154	\$66,196,476 <sup>1</sup>	\$679,438,630
2019-21	\$648,667,805	\$11,850,000	\$660,517,805

<sup>1</sup>The 2017-19 biennium one-time amount includes \$53.6 million of supplemental funding appropriated by the 2019 Legislative Assembly.

### Higher Education Delivery Methods

Higher education institutions offer course delivery through several different methods. The following is a summary of various delivery methods:

Delivery Method	Description
Face-to-face on campus	A traditional classroom environment in which both the instructor and students are physically located in the same classroom.
Face-to-face off campus	Both the instructor and students are physically located in the same classroom in an off-campus facility.
Correspondence	Instruction is provided through mail, email, or fax.
One-way video	A video connection that allows for the faculty member to be heard and seen by students.
Two-way video	A video and audio connection among two or more sites that allows for communication between faculty members and students.
Synchronous Internet	Online classes that require faculty members and students to be online at the same time for interactive learning.
Asynchronous Internet	Online classes in which faculty members and students are not required to be online at the same time. Faculty members provide learning materials and assignments that may be completed by a student anytime during a specified time period.
Hybrid/blended	Classes in which multiple delivery methods are utilized.

The University System reported the total degree credit headcount enrollment of the University System was 44,938 students during the fall 2019 semester. Of the total enrollment, 31,124, or 69.3 percent of students, were enrolled in at

least one traditional classroom course while 13,814, or 30.7 percent of students, did not have an on-campus presence. The following schedule details the number of students at each institution who had an on-campus presence:

	Students With an On-Campus Presence		Students Without an On-Campus Presence	
	Count	Percentage	Count	Percentage
Bismarck State College	1,992	53.3%	1,747	46.7%
Dakota College at Bottineau	403	40.1%	603	59.9%
Lake Region State College	384	19.4%	1,598	80.6%
North Dakota State College of Science	1,395	46.9%	1,582	53.1%
Williston State College	647	57.2%	485	42.8%
Dickinson State University	1,034	76.6%	316	23.4%
Mayville State University	484	39.9%	728	60.1%
Minot State University	2,096	67.2%	1,025	32.8%
Valley City State University	851	51.1%	814	48.9%
North Dakota State University	12,150	92.2%	1,023	7.8%
University of North Dakota	9,688	71.3%	3,893	28.7%
<b>Total</b>	<b>31,124</b>	<b>69.3%</b>	<b>13,814</b>	<b>30.7%</b>

### Enrollment

The University System reported a total degree credit headcount enrollment of 44,938 students and a total degree credit full-time equivalent (FTE) enrollment of 35,353 students in the fall 2019 enrollment report. The following is a summary of University System degree credit headcount and FTE fall enrollments by campus for 2010 through 2019:

Institution	Fall Headcount Enrollment <sup>1</sup>									
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Bismarck State College	4,177	4,392	4,109	4,062	4,002	4,078	3,976	3,756	3,778	3,739
Dickinson State University	2,485	2,346	1,837	1,449	1,479	1,317	1,386	1,425	1,392	1,350
Lake Region State College	1,913	2,056	1,974	1,898	1,988	1,918	1,947	1,972	2,072	1,982
Mayville State University	982	970	1,020	1,065	1,081	1,110	1,130	1,140	1,184	1,212
Minot State University	3,866	3,657	3,560	3,533	3,410	3,348	3,412	3,216	3,189	3,121
Dakota College at Bottineau	863	812	774	793	753	692	811	909	996	1,006
North Dakota State College of Science	2,833	3,127	3,066	3,168	3,033	3,123	3,003	2,985	2,957	2,977
North Dakota State University	14,407	14,399	14,443	14,629	14,747	14,516	14,432	14,358	13,796	13,173
University of North Dakota	14,194	14,697	15,250	15,143	14,906	14,951	14,648	14,406	13,847	13,581
Valley City State University	1,285	1,384	1,362	1,366	1,378	1,422	1,452	1,522	1,547	1,665
Williston State College	932	993	808	909	883	1,038	1,039	1,098	1,124	1,132
<b>Total</b>	<b>47,937</b>	<b>48,833</b>	<b>48,203</b>	<b>48,015</b>	<b>47,660</b>	<b>47,513</b>	<b>47,236</b>	<b>46,787</b>	<b>45,882</b>	<b>44,938</b>

<sup>1</sup>Headcount enrollment includes all students enrolled at an institution regardless of the number of credit-hours the student is enrolled in.

Institution	Fall Full-Time Equivalent Enrollment <sup>1</sup>									
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Bismarck State College	3,208	3,209	2,990	2,955	2,909	2,912	2,860	2,646	2,611	2,598
Dickinson State University	2,054	1,959	1,454	1,201	1,176	1,070	1,114	1,128	1,090	1,093
Lake Region State College	921	988	973	943	978	981	971	995	1,005	975
Mayville State University	704	704	759	749	798	796	782	784	817	801
Minot State University	3,002	2,795	2,731	2,710	2,600	2,570	2,592	2,467	2,483	2,399
Dakota College at Bottineau	540	524	474	502	518	459	490	527	590	596
North Dakota State College of Science	2,217	2,366	2,354	2,295	2,272	2,305	2,298	2,253	2,126	2,076
North Dakota State University	12,708	12,606	12,707	12,797	12,934	12,834	12,783	12,784	12,394	11,704
University of North Dakota	12,018	12,319	12,729	12,606	12,420	12,455	12,182	11,964	11,585	11,164
Valley City State University	957	1,011	995	975	990	1,031	1,044	1,086	1,096	1,164
Williston State College	570	608	537	593	579	738	756	764	806	783
<b>Total</b>	<b>38,899</b>	<b>39,089</b>	<b>38,703</b>	<b>38,326</b>	<b>38,174</b>	<b>38,151</b>	<b>37,872</b>	<b>37,398</b>	<b>36,603</b>	<b>35,353</b>

<sup>1</sup>The FTE enrollment of an institution is calculated by dividing undergraduate student credit-hours by 15 and by dividing graduate student credit-hours by 12. Full-time professional program students are counted as 1 FTE enrollment.

### Electronic Course Enrollment

The University System reported 22,599 students enrolled in at least one degree-credit course with an electronic delivery method during the fall 2019 semester. The following table summarizes the enrollment by campus for each type of distance delivery method:

<b>Enrollment in Courses With Electronic Delivery Methods (Fall 2019)</b>					
	<b>Interactive Video</b>	<b>Synchronous Internet</b>	<b>Asynchronous Internet</b>	<b>Hybrid</b>	<b>Total<sup>1</sup></b>
Bismarck State College	181		1,824	468	2,473
Dakota College at Bottineau	272		460	71	803
Lake Region State College	166		885	19	1,070
North Dakota State College of Science	107	50	701	534	1,392
Williston State College	141		644	313	1,098
Dickinson State University	74	52	505	31	662
Mayville State University	144		705	56	905
Minot State University	49	43	1,281		1,373
Valley City State University			915		915
North Dakota State University	51	29	5,257	1,160	6,497
University of North Dakota		783	5,329	1,187	7,299
<b>Total</b>	<b>1,185</b>	<b>957</b>	<b>18,506</b>	<b>3,839</b>	<b>24,487</b>

<sup>1</sup>Duplicated total in which students taking courses through multiple delivery methods are counted more than once.

### University System Space Utilization

The committee received an update regarding University System campus space utilization. The University System reported the criteria for determining space utilization includes room schedules and density. Room scheduling is the amount of time classrooms and laboratories are being used. Room density is the number of students occupying the available student space in each room compared to total capacity. The utilization rate is calculated by multiplying its scheduling rate times its density rate. The space utilization goal is for each classroom to be used at least 30 hours per week with an occupancy rate of at least 80 percent of capacity. The space utilization goal for laboratories is for each laboratory to be used at least 20 hours per week with an occupancy rate of at least 75 percent of capacity.

Information provided by the University System indicated University System institutions generally have below average space utilization rates. Utilization rates of classrooms at institutions range from 37 to 78 percent while the utilization rates of laboratories at institutions range from 35 to 101 percent.

### Higher Education Research

The University System reported estimated research expenditures of \$255.5 million in fiscal year 2018, including \$109.8 million at UND and \$145.7 million at NDSU. The Legislative Assembly, in House Bill No. 1003 (2019), provided \$6.03 million from the general fund for competitive research. The following is a summary of funding for the competitive research program:

<b>Biennium</b>	<b>General Fund</b>
1999-2001	\$1,971,000
2001-03	\$4,000,000
2003-05	\$4,750,000 <sup>1</sup>
2005-07	\$5,190,000
2007-09	\$5,650,000
2009-11	\$7,050,000 <sup>2</sup>
2011-13	\$7,050,000
2013-15	\$7,050,000
2015-17	\$6,588,225
2017-19	\$6,027,750
2019-21	\$6,027,750 <sup>3</sup>

<sup>1</sup>The 2003 Legislative Assembly provided \$100,000 of the \$4.75 million be used for a public-private partnership for establishment of a design center at UND.

<sup>2</sup>The 2009 Legislative Assembly provided \$400,000 of the \$7.05 million be used for the National Aeronautics and Space Administration's (NASA) Established Program to Stimulate Competitive Research (EPSCoR).

<sup>3</sup>The 2019 Legislative Assembly provided \$342,000 of the \$6,027,750 be used for NASA EPSCoR.

The Legislative Assembly, in House Bill No. 1020 (2019), appropriated \$150,161,980, including \$71,618,352 from the general fund, \$940,465 from the strategic investment and improvements fund, and \$77,603,163 from other funds, for NDSU agricultural research as follows:

	<b>2019-21 Biennium Appropriation</b>
Main Research Center	\$111,360,566
Dickinson Research Center	7,015,862
Central Grasslands Research Center	3,510,825
Hettinger Research Center	5,112,403
Langdon Research Center	3,052,060
North Central Research Center	5,137,570

	<b>2019-21 Biennium Appropriation</b>
Williston Research Center	5,286,833
Carrington Research Center	9,685,861
<b>Total</b>	<b>\$150,161,980</b>

Testimony from representatives of NDSU indicated 25 percent of the state's economic output is connected to agriculture and agriculture has an \$11 billion economic impact on the state. In addition, the institution generated nearly \$2 million in license and patent revenue in fiscal year 2017.

The Legislative Assembly, in Senate Bill No. 2249 (2019), established the State Energy Research Center at the UND Energy and Environmental Research Center (EERC) and provided for 1 percent of oil and gas tax collections, up to \$5 million per biennium, to be deposited in the State Energy Research Center fund. The University of North Dakota reported EERC conducted nearly \$50 million of research in fiscal year 2020, resulting in over \$100 million of economic impact.

### **Workforce Training**

The University System summarized workforce training provided by TrainND and reported the following statistics for fiscal years 2016 through 2019:

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Businesses served	1,076	843	701	730
Employees receiving training	11,908	10,917	8,205	9,540
Business satisfaction with training	99%	99%	99%	99%
Participant satisfaction with training	98%	98%	99%	99%
Businesses requesting additional training	67%	61%	47%	53%
Revenue generated from training fees (in millions)	\$4.9	\$4.4	\$4.4	\$5.1

Representatives of DSU reported the institution's previous role as a 4-year regional institution prevented the institution from providing certain educational programming needed for the workforce in western North Dakota. The report indicated DSU is evolving into a dual-mission university to offer certain certificate, 2-year, and graduate programs in demand in the region. New programs will include a Master of Entrepreneurship, an Associate of Administration, and certificates in wellness, strength and conditioning, corrective exercise, and allied health. Dickinson State University also reported it is considering adding programs for welding, commercial truck driver training, and peace officer training.

Representatives of BSC reported the institution is transitioning into a polytechnic institution, including an expansion of its mission to include certain 4-year technical degree programs. This change is in response to increasing demands from the community and private sector. New programs include Bachelor of Applied Sciences degrees in energy management and cybersecurity and a degree in automation management is being developed.

## **NORTH DAKOTA CAREER AND TECHNICAL EDUCATION SCHOLARSHIPS AND ACADEMIC SCHOLARSHIPS**

The 2009 Legislative Assembly created the CTE and academic scholarship programs. Eligibility criteria for the scholarship programs, which are in Chapter 15.1-21, were adjusted by the Legislative Assembly in 2011, 2013, 2015, 2017, and 2019. The eligibility criteria provide a student must be a resident of the state and meet the following program requirements for the scholarships:

<b>Career and Technical Education Scholarship</b>	<b>Academic Scholarship</b>
Complete 4 units of English language arts	Complete 4 units of English language arts
Complete 3 units of mathematics, including 1 unit of Algebra II and 2 units of other mathematics	Complete 3 units of mathematics, including 1 unit of Algebra II, 1 unit of mathematics for which Algebra II is a prerequisite, and 1 unit of other mathematics, which may include computer science
Complete 3 units of science	Complete 3 units of science
Complete 3 units of social studies	Complete 3 units of social studies
Complete 1 unit of physical education or .5 unit of physical education and .5 unit of health	Complete 1 unit of physical education or .5 unit of physical education and .5 unit of health
Complete 2 units of a coordinated study plan as recommended by the Department of Career and Technical Education or an education pathway approved by the Superintendent of Public Instruction	Complete 2 units of the same foreign language, the same Native American language, American sign language, or CTE from a coordinated study plan approved by the Superintendent of Public Instruction
Complete 1 unit selected from foreign language, Native American language, American sign language, fine arts, or CTE	Complete 1 unit selected from foreign language, Native American language, American sign language, fine arts, or CTE
Complete 5 additional units, 2 of which must be in the area of CTE	Complete any 5 additional units



<b>Career and Technical Education Scholarship</b>	<b>Academic Scholarship</b>
Obtain a cumulative grade point average of at least 3.0 on a 4.0 grading scale for all courses taken or only for courses taken that are required for the scholarship	Obtain a cumulative grade point average of at least 3.0 on a 4.0 grading scale for all courses taken or only for courses taken that are required for the scholarship
Obtain a grade of at least "C" in each unit or .5 unit required for the scholarship	Obtain a grade of at least "C" in each unit or .5 unit required for the scholarship
Receive a composite score of at least 24 on the ACT Aspire or a score of at least 5 on each of 3 WorkKeys assessments	Receive a composite score of at least 24 on the ACT Aspire
	Fulfill 1 unit required for the scholarship through an advanced placement course or fulfill .5 unit required for the scholarship through a dual-credit course

Any student who meets the requirements for a CTE scholarship or an academic scholarship is eligible to receive a scholarship of \$750 per semester, or \$500 per quarter, for each period the student is enrolled full-time at a North Dakota higher education institution and maintains eligibility up to a maximum amount of \$6,000. Scholarships may be provided to students for up to 6 years following the student's graduation from high school.

The 2019-21 biennium legislative appropriation provides \$12,016,749 from the general fund for the program, the same amount as provided for the 2017-19 biennium.

Section 15-10-59 requires the SBHE to provide an annual report to the Legislative Management regarding the number of North Dakota academic and CTE scholarships awarded and demographic information pertaining to the recipients. Representatives of the University System reported of the 7,962 high school seniors in the state who graduated in 2019, a total of 1,868, or 23 percent, qualified to receive an academic or CTE scholarship. Since the program began in 2010, there have been 79,643 high school graduates in the state and 16,099, or 20 percent of those graduates were eligible to receive an academic or CTE scholarship. Of the 16,099 eligible students, 9,703 students qualified for an academic scholarship and 6,396 students qualified for a CTE scholarship.

The University System reported a total of 5,025 students received an academic or CTE scholarship during the fall 2019 semester as follows:

	<b>Type of Institution Attended by Scholarship Recipients (Fall 2019 Semester)</b>				
	<b>2-Year Public or Tribal Institution</b>	<b>4-Year Public Institution</b>	<b>Public Research Institution</b>	<b>Private Institution</b>	<b>Total</b>
Academic scholarship recipients	171	296	2,142	319	2,928
CTE scholarship recipients	490	429	977	201	2,097
<b>Total</b>	<b>661</b>	<b>725</b>	<b>3,119</b>	<b>520</b>	<b>5,025</b>

To supplement the \$12.0 million appropriated for the program for the 2019-21 biennium, the University System reported \$2.5 million was transferred from the student financial assistance grants line item to the academic and CTE scholarships line item due to a funding shortfall for the program. The University System estimates \$16.4 million will be needed for academic and CTE scholarships during the 2021-23 biennium.

### **UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL**

The UND School of Medicine and Health Sciences Advisory Council consists of 16 members, including a majority party member and minority party member from both the Senate and House of Representatives. Other members to the advisory council are selected by the Department of Human Services, SBHE, State Department of Health, North Dakota Medical Association, North Dakota Hospital Association, the Department of Veterans' Affairs hospital in Fargo, the North Dakota Center for Nursing, the UND Center for Rural Health, and the Dean of the School of Medicine and Health Sciences.

#### **Report**

Section 15-52-04 requires the UND School of Medicine and Health Sciences Advisory Council to provide a biennial report to the Legislative Council. The report is to provide recommendations regarding the strategic plan, programs, and facilities of the school. Recommendations for implementing strategies through the school must address the health care needs of the people of the state and provide information regarding the state's health care workforce needs. Recommendations of the advisory council may address the areas of medical education and training, recruitment and retention of health care professionals, factors influencing the practice environment of health care professionals, access to health care, patient safety, quality of health care, and financial challenges in the delivery of health care.

The committee received a report from representatives of the UND School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the school. According to the report, the UND School of

Medicine and Health Sciences has implemented the health care workforce initiative. The initiative includes four major initiative areas:

- Reduce disease burden to lower the demand for health care services and related costs;
- Train more physicians and health care providers by increasing medical and health science class sizes and expanding residency programs;
- Retain more health care providers in the state through programs, such as the RuralMed scholarship program; and
- Improve the efficiency of the health care delivery system by training health care providers in interprofessional health care teams and by the use of learning communities.

### GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES

Chapter 15-70 creates an assistance program for tribally controlled community colleges located in the state. Funding is to be distributed to the tribally controlled community colleges to defray the costs of education associated with the enrollment of nonbeneficiary students.

To qualify for a grant, a qualified institution must submit an application to the SBHE which documents the enrollment status of each student for whom financial assistance is sought. If an application is approved, the SBHE distributes an annual payment to the institution for each nonbeneficiary student enrolled at the institution. The amount of payment is equal to the per student payment provided to institutions under the federal Tribally Controlled Colleges and Universities Assistance Act of 1978 or a prorated amount if funding is limited.

Each tribal college receiving a grant under Chapter 15-70 is to submit a report to the Legislative Council detailing the expenditures of the grant funds received by the institution. Additionally, each college is to submit a copy of the institution's latest audit report and documentation of the enrollment status of each student for whom financial assistance is requested. Any institution that fails to meet the reporting requirements is ineligible to receive future grants until the required information is submitted.

The following table details legislative appropriations for grants to tribally controlled community colleges:

Biennium	General Fund	Permanent Oil Tax Trust Fund	Student Loan Trust Fund
2007-09		\$700,000	
2009-11		\$700,000	
2011-13	\$1,000,000		
2013-15	\$1,000,000		
2015-17	\$500,000		\$500,000
2017-19	\$100,000		\$500,000
2019-21	\$1,000,000		

Representatives of the University System provided a report to the committee regarding the allocation of tribal college assistance grants. The University System reported \$7,356 of grant funding was awarded per FTE nonbeneficiary student during the 2019-20 academic year. The committee reviewed the following schedule detailing the allocation of grant funding during the 2019-20 academic year:

Tribal College Assistance Grants - 2019-20 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	19	14.1	\$121,762
Nueta Hidatsa Sahnish College (Formerly Fort Berthold Community College)	17	13.7	118,307
Sitting Bull College	7	3.2	27,634
Turtle Mountain Community College	17	11.7	101,036
United Tribes Technical College	20	15.2	131,261
Total	80	57.9	\$500,000

### CAPITAL BUILDING FUND PROGRAM

Section 31 of House Bill No. 1003 (2019) required the SBHE to report to the Legislative Management regarding the use of funding in each institution's capital building fund line item, the source of matching funds, and each institution's 5-year plan for capital construction spending. The 2019 Legislative Assembly established a capital building fund program for the 2019-21 biennium in Sections 29 and 30 of House Bill No. 1003, including one-time appropriations of \$17 million from Bank of North Dakota profits and \$2 million from the general fund which are to be matched by other institutional funds as follows:

	Tier II		Tier III	
	Bank of North Dakota Profits	Institution Match (\$1 to \$1)	General Fund and Bank of North Dakota Profits	Institution Match (\$2 to \$1)
Bismarck State College	\$425,693	\$425,693	\$500,000	\$1,000,000
Dakota College at Bottineau	106,064	106,064	500,000	1,000,000
Lake Region State College	177,375	177,375	500,000	1,000,000
North Dakota State College of Science	500,695	500,695	500,000	1,000,000
Williston State College	137,947	137,947	500,000	1,000,000
Dickinson State University	268,862	268,862	500,000	1,000,000
Mayville State University	240,029	240,029	500,000	1,000,000
Minot State University	572,801	572,801	500,000	1,000,000
Valley City State University	309,137	309,137	500,000	1,000,000
North Dakota State University	2,899,596	2,899,596	2,250,000	4,500,000
University of North Dakota	4,361,801	4,361,801	2,250,000	4,500,000
<b>Total</b>	<b>\$10,000,000</b>	<b>\$10,000,000</b>	<b>\$9,000,000</b>	<b>\$18,000,000</b>

The funding in Tier II was appropriated directly to the institutions and the funding in Tier III was appropriated to the University System office with a directive to allocate the money as identified in the schedule above as matching funds are secured. An additional \$11.1 million from the general fund, which must be matched by each institution with \$2 from operations or other sources for each \$1 of extraordinary repairs funding used for a project, was appropriated in the capital assets line item of each institution for extraordinary repairs. This amount is considered Tier I of the capital building fund program. After an institution has matched 75 percent of the funding appropriated from the general fund as Tier I for institution extraordinary repairs and subject to SBHE approval, the institution may use money from Tier II and Tier III of its capital building fund for extraordinary repairs and deferred maintenance projects that do not exceed \$700,000 and do not increase the square footage of a building. In addition, the Legislative Assembly authorized the use of capital building fund money for specific capital projects at Lake Region State College, the North Dakota State College of Science (NDSCS), Minot State University (MiSU), Valley City State University (VCSU), and Dakota College at Bottineau.

Representatives of the University System reported of the \$33.3 million appropriated for Tier I of the capital building fund program, including \$11.1 million from the general fund and \$22.2 million of institution matching funds, \$20.8 million, or 62 percent, had been utilized as of September 9, 2020. According to the report, UND and Williston State College (WSC) had fully utilized their Tier I funds; BSC had utilized 75 percent of its Tier I funds and transferred the remainder to operations pursuant to Section 23 of House Bill No. 1003 (2019), as amended by Section 25 of Senate Bill No. 2015 (2019); and seven other institutions had partially utilized their Tier I funds.

Of the \$20 million appropriated for Tier II of the capital building fund program, including \$10 million from Bank of North Dakota profits and \$10 million from institution matching funds, \$1.1 million, or 5 percent, had been utilized as of September 9, 2020. The report from the University System indicated WSC had fully utilized its Tier II funds, BSC and DSU had partially utilized their Tier II funds, and the other eight institutions had not met matching fund requirements. Four institutions did not expect to utilize any Tier II funds during the 2019-21 biennium.

The University System reported of the \$27 million appropriated for Tier III of the capital building fund program, including \$7 million from Bank of North Dakota profits, \$2 million from the general fund, and \$18 million from institution matching funds, \$1.5 million, or 6 percent, had been utilized as of September 9, 2020. Williston State College had fully utilized its Tier III funds and the other 10 institutions had not met matching fund requirements. Four institutions did not expect to utilize any Tier III funds during the 2019-21 biennium.

### TRANSFERS BETWEEN LINE ITEMS

Section 23 of House Bill No. 1003 (2019), as amended by Section 25 of Senate Bill No. 2015 (2019), requires the SBHE to provide a report regarding the transfer of appropriation authority among the operations, capital assets, and capital building fund line items by University System institutions. Section 23 allows institutions to transfer appropriation authority from the operations line item to the capital assets and capital building fund line items for matching fund requirements. Section 23 also allows institutions to transfer appropriation authority from the capital assets line item to the operations line item after the institution has matched and used 75 percent of the funding in the capital assets line item appropriated from the general fund for institution extraordinary repairs.

The University System reported BSC transferred \$104,418 from the capital assets line item to the operations line item and VCSU transferred appropriation authority from the operations line item (\$1,125,775) to the capital assets line item (\$816,638) and the capital building fund line item (\$309,137) for extraordinary repairs matching funds.

### HIGHER EDUCATION FUNDING FORMULA REVIEW COMMITTEE

The Higher Education Funding Formula Review Committee was assigned to study the higher education funding formula pursuant to House Bill No. 1029 (2019). The study was to include the appropriateness of certain credit-hour

weighting factors and the potential or need for additional weighting factors. The Legislative Management directed the Higher Education Funding Formula Review Committee to report to the interim Higher Education Committee regarding the study.

### Adjusted Student Credit-Hour Funding Method

The Legislative Assembly, in Senate Bill No. 2200 (2013), adopted a higher education funding method beginning with the 2013-15 biennium based on an adjusted student credit-hour calculation. The calculation involves multiplying a base amount per student credit-hour by an adjusted student credit-hour calculation for each institution. The resulting equalized base budget is then adjusted for inflation to determine total institutional funding.

The adjusted student credit-hour amount for an institution is determined as follows:

1. Completed student credit-hours are determined for each institution. A completed credit-hour is one for which a student met all institutional requirements and obtained a passing grade.
2. A weighted completed student credit-hour calculation is determined by multiplying each institution's completed student credit-hours by an instructional program classification factor. The factor amount for each program classification is based upon historical costs of instruction in each program.
3. The weighted completed student credit-hour amount for each institution is then adjusted for:
  - a. A credit completion factor which is based on total credits completed at an institution. Institutions that have a lower credit-hour output receive a greater weighting factor.
  - b. An institutional size factor based on the square footage of facilities at an institution. Institutions that have a large amount of infrastructure may receive an additional factor adjustment.

The adjusted student credit-hours are then multiplied by a base per credit amount which varies based on institution type. The following is a summary of the base rates for each institution:

Institutions	Biennial Base Rate Per Credit-Hour		
	2015-17	2017-19	2019-21
North Dakota State University, University of North Dakota	\$72.63	\$58.65	\$60.87
Dickinson State University, Mayville State University, Minot State University, Valley City State University	\$107.33	\$86.95	\$90.98
Bismarck State College, Dakota College at Bottineau, Lake Region State College, North Dakota State College of Science, Williston State College	\$114.88	\$93.03	\$97.06

Through June 30, 2019, the calculation of funding through the adjusted student credit-hour funding method was to ensure an institution would not receive less than 96 percent of the state funding to which the institution was entitled during the previous biennium. The minimum amount payable requirement resulted in an additional \$710,879 appropriation for MiSU for the 2019-21 biennium, \$2,309,626 for DSU for the 2017-19 biennium, and \$972,723 for DSU for the 2015-17 biennium. The minimum amount payable requirement was not continued by the 2019 Legislative Assembly for use in the funding formula calculation for the 2021-23 biennium.

Under the adjusted student credit-hour funding formula, funding for extraordinary repairs is included in the base amount determined by the formula; however, funding for major capital projects is appropriated separately from the formula. The Legislative Assembly appropriated \$11,117,046 from the general fund for the 2019-21 biennium for extraordinary repairs under the adjusted student credit-hour funding formula. This funding is considered Tier I funding under the capital building fund program.

### Preliminary 2021-23 Biennium Funding Formula Calculations

The 2021-23 biennium higher education funding formula calculations will be based on student credit-hours completed during the 2017-19 biennium. The preliminary calculations for the 2021-23 biennium based on current law indicate 7,582,996 adjusted student credit-hours were completed at institutions during the 2017-19 biennium. This represents a decrease of 567, or 0 percent, in completed adjusted student credit-hours from the 2015-17 biennium.

The following preliminary funding formula calculations are based on current law for the 2021-23 biennium:

Institution	2019-21 Biennium Base Funding	2021-23 Biennium Preliminary Funding Formula Calculation	Increase (Decrease)	
Bismarck State College	\$31,068,227	\$27,911,447	(\$3,156,780)	(10.2%)
Dakota College at Bottineau	7,740,826	9,134,608	1,393,782	18.0%
Lake Region State College	12,945,280	13,442,616	497,336	3.8%
North Dakota State College of Science	36,542,022	34,679,441	(1,862,581)	(5.1%)
Williston State College	10,067,743	9,782,774	(284,969)	(2.8%)

Institution	2019-21 Biennium Base Funding	2021-23 Biennium Preliminary Funding Formula Calculation	Increase (Decrease)	
Dickinson State University	18,393,063	19,226,621	833,558	4.5%
Mayville State University	16,420,616	18,242,764	1,822,148	11.1%
Minot State University	39,896,693	39,966,149	69,456	0.2%
Valley City State University	22,658,933	21,798,535	(860,398)	(3.8%)
North Dakota State University	132,714,983	132,685,887	(29,096)	(0.0%)
University of North Dakota	202,539,508	202,951,415	411,907	0.2%
Total	\$530,987,894	\$529,822,257	(\$1,165,637)	(0.2%)

### Report

The Higher Education Funding Formula Review Committee received testimony from representatives of the University System regarding the higher education funding formula, including the results of a survey of institutions regarding the formula. The Higher Education Funding Formula Review Committee also reviewed instructional program costs and received testimony from representatives of the University System regarding the capital building fund program.

The Higher Education Funding Formula Review Committee, through the Legislative Management Chairman, forwarded the following three committee recommendations to the SBHE for consideration by the board:

1. Consider not recognizing the change in the classification of instructional programs (CIP) code to move certain veterinary-related courses from the health sciences cluster to the agriculture cluster.
2. Consider reviewing the institutional size factor of the higher education funding formula during the 2019-20 interim and performing biennial reviews of the higher education funding formula beginning with the 2021-23 biennium.
3. Consider meeting with legislative leadership regarding the capital building fund program and requested funding for capital projects before each legislative session.

The Higher Education Funding Formula Review Committee also recommended two bill drafts, one to amend the higher education funding formula and one to establish the capital building fund program in the Century Code. The Higher Education Committee considered, but did not recommend either of the bill drafts recommended by the Higher Education Funding Formula Review Committee; however, the Higher Education Committee did consider the bill drafts in its recommendations.

### OTHER INFORMATION RECEIVED

During the interim, the committee held meetings on the campuses of several University System institutions, received updates regarding unique issues affecting the campuses, and conducted tours of selected campus buildings at DSU, WSC, NDSU, and NDSCS. The committee intended to tour additional campuses, but was unable to due to the Coronavirus (COVID-19) pandemic.

### Student Financial Assistance Programs

The committee received information regarding various state student financial assistance programs. The committee reviewed the following schedule which provides details regarding the programs:

Program	Description	Award Amount	2019-21 Biennium General Fund Appropriations
Student financial assistance grants	Needs-based grants awarded to students based on free application for federal student aid (FAFSA) information	Maximum grant of \$1,100 per semester	\$23,917,306
Scholars program	Scholarships awarded to the top-ranked high school graduates based on ACT Aspire scores	Full amount of tuition	\$1,807,115
Academic and CTE scholarship program	Scholarships awarded to resident students who achieve certain academic standards in high school	\$750 per semester	\$12,016,749
Native American scholarship program	Merit- or needs-based scholarships awarded to students who are enrolled members of a federally recognized Indian tribe	Up to \$2,000 per academic year	\$555,323
Professional student exchange program	Secures admission opportunities and reduces tuition costs for North Dakota students who enroll in veterinary medicine, dentistry, and optometry programs at certain out-of-state institutions	The amount of tuition reduced varies by program	\$3,699,342

The University System reported that in addition to the state financial assistance programs, several institutional scholarship programs provide student financial assistance. Funding for most of the scholarships are provided by foundations or donors for various purposes, such as athletics or fine arts scholarships. Approximately \$32.6 million of institutional scholarships were awarded in the 2018-19 academic year.

### Higher Education Challenge Grant Program

The committee received information regarding the higher education challenge grant program. The program is used to provide grants to University System institutions to match private donations. The 2019 Legislative Assembly appropriated \$9.65 million of one-time funding from the general fund for the grant program during the 2019-21 biennium. Of the funding appropriated, \$1.7 million each was designated to be available to UND and NDSU; \$950,000 each was designated to be available to BSC, MiSU, and NDSCS; \$700,000 each was designated to be available to DSU, Mayville State University, and VCSU; \$350,000 each was designated to be available to Dakota College at Bottineau, Lake Region State College, and WSC; and \$250,000 was designated to be available to the UND School of Law. The University System reported of the \$9.65 million available for higher education challenge grants, approximately \$6.9 million had been awarded through June 2020. The University System reported 88 percent of the \$6.9 million awarded to campuses is for student scholarships.

## COMMITTEE RECOMMENDATIONS

The committee recommends:

1. [Senate Bill No. 2030](#) to continue the higher education challenge grant program at its current funding level with an appropriation of \$9.65 million from the general fund.
2. [Senate Bill No. 2031](#) to amend the higher education funding formula to:
  - a. Increase funding for credits completed in CTE;
  - b. Modify the credit completion factor to protect institutions with increasing enrollment from a reduction in funding caused by a decrease in the credit completion factor;
  - c. Restore the minimum amount payable clause at 96 percent;
  - d. Eliminate the funding formula reduction attributable to the law enforcement tuition waiver;
  - e. Eliminate the institutional size factor;
  - f. Direct the SBHE to conduct an instructional program cost analysis during the 2021-22 interim using 2019-21 biennium financial data;
  - g. Provide legislative intent that the SBHE transfer computer science credits from the core disciplines cluster to the engineering discipline cluster;
  - h. Provide legislative intent that the SBHE not recognize the change in the CIP code to move certain veterinary-related courses from the health sciences cluster to the agriculture cluster; and
  - i. Provide legislative intent that the SBHE place certain unique, high-cost CTE courses in an upper division created under the CTE discipline cluster.

This bill draft is estimated to increase funding for higher education institutions by \$15.5 million from the general fund for the 2021-23 biennium.

3. [Senate Bill No. 2032](#) to amend the higher education funding formula to provide for a reduced base funding amount for upper division non-CTE credits completed at 2-year institutions and an increased base funding amount for CTE credits completed at 4-year regional institutions. This bill draft is estimated to decrease funding for BSC by \$131,267 from the general fund for the 2021-23 biennium.
4. [Senate Bill No. 2033](#) to establish the capital building fund program in the Century Code with no funding limitation on deferred maintenance and extraordinary repairs projects. The bill draft also creates a capital building fund under the control of the SBHE, provides specific carryover authority for capital building fund money and authorizes NDSU and UND to use capital building funds for certain capital projects, including Dunbar Hall, the agriculture products development center, and Gamble Hall.

# HIGHER EDUCATION FUNDING FORMULA REVIEW COMMITTEE

The Higher Education Funding Formula Review Committee was assigned to study the higher education funding formula pursuant to House Bill No. 1029 (2019). The study was to include the appropriateness of certain credit-hour weighting factors and the potential or need for additional weighting factors. The Higher Education Funding Formula Review Committee was to report to the interim Higher Education Committee regarding the study.

Committee members were Representatives Mark Sanford (Chairman), Tracy Boe, and Bob Martinson, Senators Ray Holmberg, Karen K. Krebsbach, and Larry J. Robinson, and citizen members Bruce A. Bollinger, Rebecca Collins, Tammy Dolan, Jed Shivers, and Brent Winiger.

## BACKGROUND

The Legislative Management has established a higher education committee each interim since 1999. These committees have reviewed higher education funding, expectations of the North Dakota University System, and accountability and reporting measures for the University System. The committees, at times, gathered input through the use of a higher education roundtable, which consisted of members of the higher education committee and representatives from the State Board of Higher Education, business and industry, the executive branch, and higher education institutions, including tribal and private colleges.

### University System Information

The University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, 2 are doctoral-granting institutions, 2 are master's-granting institutions, 2 are universities that offer baccalaureate degrees, and 5 are colleges that offer associate and technical degrees.

The University System reported fall 2019 total degree credit headcount enrollment of 44,938 students and a total degree credit full-time equivalent (FTE) enrollment of 35,353 students, compared to fall 2018 headcount enrollment of 45,882 students and FTE enrollment of 36,603 students.

### State Appropriations

Legislative appropriations for the 2019-21 biennium for higher education institutions and the University System office totaled \$2,999,878,919, of which \$660,517,805 was from the general fund. Of the total general fund appropriation amount, \$11,850,000 was considered one-time funding. The following is a history of legislative appropriations for higher education since the 1997-99 biennium:

Biennium	General Fund	Special Funds	Total
1997-99	\$306,825,098	\$323,595,863	\$630,420,961
1999-2001	\$334,449,287	\$713,538,799	\$1,047,988,086
2001-03	\$366,953,836	\$80,367,201	\$447,321,037
2003-05	\$364,029,938	\$110,546,775	\$474,576,713
2005-07	\$387,157,893	\$178,552,108	\$565,710,001
2007-09	\$472,036,237	\$165,419,701	\$637,455,938
2009-11	\$593,355,047	\$202,764,364	\$796,119,411
2011-13	\$657,838,539	\$108,817,759	\$766,656,298
2013-15	\$910,632,494	\$177,980,941	\$1,088,613,435
2015-17	\$837,849,212	\$66,644,264	\$904,493,476
2017-19	\$679,438,630	\$2,059,950,275	\$2,739,388,905
2019-21	\$660,517,805	\$2,339,361,114	\$2,999,878,919

**NOTE:** The special funds amounts for the 1997-99 biennium reflect the appropriation of tuition income. The special funds amounts for the 1999-2001, 2017-19, and 2019-21 bienniums reflect the appropriation of tuition and local funds.

The following is a summary of ongoing and one-time general fund appropriations for the University System since the 2007-09 biennium:

Biennium	General Fund Appropriations		Total
	Ongoing Appropriations	One-Time Appropriations	
2007-09	\$443,654,169	\$28,382,068	\$472,036,237
2009-11	\$534,062,895	\$59,292,152	\$593,355,047
2011-13	\$606,525,437	\$51,313,102	\$657,838,539
2013-15	\$679,271,846	\$231,360,648	\$910,632,494
2015-17	\$681,876,059	\$155,973,153	\$837,849,212
2017-19	\$613,242,154	\$66,196,476	\$679,438,630
2019-21	\$648,667,805	\$11,850,000	\$660,517,805

## Education Funding Methods

### Long-Term Financing Plan and Resource Allocation Model (2001-03 Biennium Through 2011-13 Biennium)

The 1999-2000 Higher Education Roundtable recommended the State Board of Higher Education and the chancellor of the University System develop a long-term financing plan and resource allocation model. As a result, the board contracted with the National Center for Higher Education Management Systems for assistance with the development of the plan and model. The board reviewed the recommendations of the National Center for Higher Education Management Systems and adopted a long-term financing plan consisting of base operating funding, incentive funding, and capital asset funding components. The following is a description of the long-term financing plan and resource allocation model that was used for the 2001-03 biennium to the 2011-13 biennium.

**Base operating funding component** - The base operating funding component of the long-term financing plan provided funding to each higher education institution to support core campus functions, such as instruction, research, and public service. The funding for each institution was based on the institution's current state general fund appropriation with general fund appropriation increases to address parity and equity. Parity funding was to be used to continue current programs and services, including salaries, benefits, and inflationary increases. Equity funding was to be distributed to institutions based on a funding comparison to peer institutions.

**Incentive funding component** - The incentive funding component of the long-term financing plan included funding for the State Board of Higher Education to support state and system priorities consistent with the goals of the Higher Education Roundtable.

**Capital asset funding component** - The capital asset funding component of the long-term financing plan provided funding to each higher education institution for maintenance and replacement of facilities and infrastructure. The funding provided to each institution was left to the discretion of the institution with appropriate approvals by the State Board of Higher Education for projects greater than \$250,000. Each institution was given the authority to allocate funds for repair and replacement priorities for both deferred maintenance and regular repair and replacement projects as determined by the institution. Institutions were allowed to continue unspent capital asset funding from one biennium to the next to complete the projects started in one biennium but not completed until the next and to accumulate funds to complete large projects that require multiyear funding. The capital asset funding component was applied to new state buildings on campuses; however, no new operating funds were added to the base operating budget for operating costs if the operating base was already at the benchmark target.

### Adjusted Student Credit-Hour Funding Method (2013-15 Biennium Through 2019-21 Biennium)

The Legislative Assembly, through Senate Bill No. 2200 (2013), adopted a new higher education funding method beginning with the 2013-15 biennium based on an adjusted student credit-hour calculation. The calculation involves multiplying a base amount per student credit-hour by an adjusted student credit-hour calculation for each institution. The resulting equalized base budget is then adjusted for inflation to determine total funding for an institution.

The adjusted student credit-hour amount for an institution is determined as follows:

1. Completed student credit-hours are determined for each institution. A completed credit-hour is one for which a student met all institutional requirements and obtained a passing grade.
2. A weighted completed student credit-hour calculation is determined by multiplying each institution's completed student credit-hours by an instructional program classification factor. The factor amount for each program classification is based upon historical costs of instruction in each program.
3. The weighted completed student credit-hour amount for each institution is adjusted for:
  - a. A credit completion factor based on total credits completed at an institution. Institutions that have a lower credit-hour output receive a greater weighting factor.
  - b. An institutional size factor based on the square footage of facilities at an institution. Institutions that have a large amount of infrastructure may receive an additional factor adjustment.

The adjusted student credit-hours are multiplied by a base per-credit amount which varies based on institution type. The following is a summary of the base rates for each institution:

Institutions	Biennial Base Rate Per Credit-Hour		
	2015-17	2017-19	2019-21
North Dakota State University, University of North Dakota	\$72.63	\$58.65	\$60.87
Dickinson State University, Mayville State University, Minot State University, Valley City State University	\$107.33	\$86.95	\$90.98
Bismarck State College, Dakota College at Bottineau, Lake Region State College, North Dakota State College of Science, Williston State College	\$114.88	\$93.03	\$97.06



Through June 30, 2019, the calculation of funding through the adjusted student credit-hour funding method was to ensure an institution would not receive less than 96 percent of the state funding to which the institution was entitled during the previous biennium. The minimum amount payable requirement resulted in an additional \$710,879 appropriation for Minot State University for the 2019-21 biennium, \$2,309,626 for Dickinson State University for the 2017-19 biennium, and \$972,723 for Dickinson State University for the 2015-17 biennium. The minimum amount payable requirement was not continued by the 2019 Legislative Assembly for use in the funding formula calculation for the 2021-23 biennium.

Under the adjusted student credit-hour funding formula, funding for extraordinary repairs is included in the base amount determined by the formula; however, funding for major capital projects is appropriated separately from the formula. The Legislative Assembly appropriated \$11,117,046 from the general fund for extraordinary repairs under the adjusted student credit-hour funding formula. This funding is considered Tier I funding and must be matched by the institutions with \$2 from operations or other sources for each \$1 of appropriated extraordinary repairs funding used for a project.

In addition to appropriating funding for specific capital projects, the 2019 Legislative Assembly established a capital building fund program for the 2019-21 biennium. The Legislative Assembly appropriated \$10 million from Bank of North Dakota profits as Tier II funding under the capital building fund program. The Tier II funding is appropriated directly to each institution and must be matched by the institutions with \$1 from operations or other sources for each \$1 from Bank of North Dakota profits. The Legislative Assembly appropriated \$9 million, including \$7 million from Bank of North Dakota profits and \$2 million from the general fund, as Tier III funding under the capital building fund program. The Tier III funding is appropriated to the University System office, to be allocated to the institutions as matching funds are committed and must be matched by the institutions with \$2 from operations or other sources for each \$1 appropriated as Tier III funding. After an institution has matched 75 percent of the funding appropriated from the general fund as Tier I for institution extraordinary repairs and subject to State Board of Higher Education approval, each institution may use money from Tier II and Tier III of its capital building fund for extraordinary repairs and deferred maintenance projects that do not exceed \$700,000 and do not increase the square footage of a building. In addition, the Legislative Assembly authorized the use of capital building fund money for specific capital projects at Lake Region State College, the North Dakota State College of Science, Minot State University, Valley City State University, and Dakota College at Bottineau.

**Preliminary 2021-23 Biennium Funding Formula Calculations**

The 2021-23 biennium higher education funding formula calculations will be based on student credit-hours completed during the 2017-19 biennium. The preliminary calculations for the 2021-23 biennium based on current law indicate 7,582,996 adjusted student credit-hours were completed at institutions during the 2017-19 biennium. This represents a decrease of 567, or 0.0 percent, in completed adjusted student credit-hours from the 2015-17 biennium.

The following preliminary funding formula calculations are based on current law for the 2021-23 biennium:

Institution	2019-21 Biennium Base Funding	2021-23 Biennium Preliminary Funding Formula Calculation	Increase (Decrease)	
Bismarck State College	\$31,068,227	\$27,911,447	(\$3,156,780)	(10.2%)
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Minot State University	39,896,693	39,966,149	69,456	0.2%
Valley City State University	22,658,933	21,798,535	(860,398)	(3.8%)
North Dakota State University	132,714,983	132,685,887	(29,096)	(0.0%)
University of North Dakota	202,539,508	202,951,415	411,907	0.2%
Total	\$530,987,894	\$529,822,257	(\$1,165,637)	(0.2%)

**FUNDING FORMULA REVIEW**

The committee received testimony from representatives of the University System regarding the higher education funding formula. The University System office conducted a survey of institutions and determined concerns with the formula include:

- The formula does not provide funding for program startup or expansion costs;
- The instructional program factor uses the national classification of instructional programs (CIP) code to differentiate between academic programs, which may not adequately reflect differences in costs between certain courses;

- The formula does not differentiate between online and face-to-face courses;
- The credit completion factor may penalize institutions with increasing enrollment;
- The formula does not account for geographic differences in cost of living;
- The minimum amount payable factor was allowed to expire; and
- Systemwide programs provided by a single campus may not be adequately funded through the formula.

The University System reported the CIP code will be changing in 2020 to shift certain veterinary programs from the health sciences discipline cluster to the agriculture discipline cluster, which would result in reduced funding for certain institutions. The University System reported changes to veterinary programs in the CIP code would result in a reduction of approximately \$418,852 through the higher education funding formula using current weighted credit-hours and funding rates, including \$374,168 for North Dakota State University, \$20,392 for Bismarck State College, and \$24,292 for Dickinson State University.

The University System conducted a review of instructional program costs to ensure the program weighting factors are appropriate and reported the instructional program costs were significantly affected by the budget reductions during the 2015-17 and 2017-19 bienniums. The University System suggested the committee not recommend changes to the instructional program weighting factors based on 2017-19 financial data because the data may not appropriately reflect actual differences in program costs due to the effect of the budget reductions. The University System recommended certain changes to the higher education funding formula based on its review, including:

- Modifying the credit completion factor to establish a historical base factor and a credit growth factor;
- Moving computer sciences and support services credits from the core disciplines cluster to the engineering discipline cluster;
- Directing the State Board of Higher Education to conduct an instructional program cost analysis during the 2021-22 interim using 2019-21 biennium financial data;
- Eliminating the institutional size factor;
- Removing the funding reduction clause related to credits completed by students receiving a law enforcement tuition waiver; and
- Restoring the minimum amount payable clause at 98 percent of the funding appropriated during the prior biennium.

The committee received testimony from representatives of the University System regarding the capital building fund program established by the Legislative Assembly in House Bill No. 1003 (2019). The University System reported the use of funding in each institution's capital building fund is limited to certain projects identified in House Bill No. 1003 (2019) and extraordinary repairs and deferred maintenance projects that do not exceed \$700,000. The committee received testimony from representatives of University System institutions requesting access to capital building fund money for extraordinary repairs and deferred maintenance projects in excess of \$700,000. The University System suggested the committee consider:

- Providing specific carryover authority for capital building fund money;
- Combining Tier II and Tier III capital building fund appropriations into a single capital building fund tier with a \$1 to \$1 matching requirement;
- Eliminating the \$700,000 limit on deferred maintenance and extraordinary repairs projects; and
- Allowing capital building fund money to be spent on deferred maintenance and extraordinary repairs projects that do not increase the overall square footage of all buildings on a campus relative to the total square footage during the prior biennium.

### **Committee Considerations**

The committee considered but did not make recommendations regarding several concerns or suggestions from the University System. With respect to the suggestion of providing funding for program startup or expansion costs, the committee determined special funding for program startup or expansion costs could be addressed on an individual basis. The committee discussed the concern expressed by representatives of the University System relating to differentiating between online and face-to-face courses and determined there was not adequate financial information available to support differentiated funding by course delivery method. The committee discussed issues related to accounting for geographic differences in the cost of living and determined it would not recommend the issue be addressed through the funding formula. The committee also discussed combining Tier II and Tier III capital building fund appropriations into a single capital building fund tier with a \$1 to \$1 matching requirement and determined it would recommend the current matching fund requirements.

The committee suggested the University System report to the Higher Education Committee regarding systemwide programs provided by a single campus that may not be adequately funded through the formula.

The committee, through the Legislative Management Chairman, forwarded three committee recommendations to the State Board of Higher Education for consideration by the Board. Recommendations to the State Board of Higher Education include:

1. Consider not recognizing the change in the CIP code to move certain veterinary-related courses from the health sciences cluster to the agriculture cluster.
2. Consider reviewing the institutional size factor of the higher education funding formula during the 2019-20 interim and performing biennial reviews of the higher education funding formula beginning with the 2021-23 biennium.
3. Consider meeting with legislative leadership regarding the capital building fund program and requested funding for capital projects before each legislative session.

### **Committee Recommendations**

The committee recommends:

1. A bill draft [21.0044.02000] to amend the higher education funding formula to:
  - a. Increase funding for credits completed in career and technical education;
  - b. Modify the credit completion factor to protect institutions with increasing enrollment from a reduction in funding caused by a decrease in the credit completion factor;
  - c. Restore the minimum amount payable clause at 96 percent;
  - d. Eliminate the funding formula reduction attributable to the law enforcement tuition waiver;
  - e. Eliminate the institutional size factor;
  - f. Direct the State Board of Higher Education to conduct an instructional program cost analysis during the 2021-22 interim using 2019-21 biennium financial data;
  - g. Provide legislative intent that the State Board of Higher Education transfer computer science credits from the core disciplines cluster to the engineering discipline cluster; and
  - h. Provide legislative intent that the State Board of Higher Education not recognize the change in the CIP code to move certain veterinary-related courses from the health sciences cluster to the agriculture cluster.
2. A bill draft [21.0021.01000] to establish the capital building fund program in North Dakota Century Code with no funding limitation on deferred maintenance and extraordinary repairs projects. The bill draft also provides specific carryover authority for capital building fund money and authorizes North Dakota State University and the University of North Dakota to use capital building funds for certain capital projects, including Dunbar Hall, the agriculture products development center, and Gamble Hall.

# HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following responsibilities:

- Section 33 of Senate Bill No. 2015 (2019) directed a study of issues relating to the North Dakota Olmstead Commission, including consideration of the implementation of the new Olmstead Commission structure and any emerging Olmstead issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities.
- Senate Concurrent Resolution No. 4014 (2019) directed a study of the implementation of the recommendations of the Human Services Research Institute's study of North Dakota's behavioral health system.

The Legislative Management delegated to the committee the responsibility to:

- Receive annual reports from the Autism Spectrum Disorder (ASD) task force. (North Dakota Century Code (NDCC) Section 50-06-32)
- Receive a report from the Department of Human Services (DHS) regarding the ASD program pilot project. (Section 50-06-32.1)
- Receive a report from DHS and the steering committee for the developmental disabilities system reimbursement project on development activities and status information for the project. (Section 50-06-37)
- Receive a report from DHS before August 1 of each even-numbered year regarding provider reimbursement rates under the medical assistance expansion program. (Section 50-24.1-37)
- Receive a biennial report before August of each even-numbered year from DHS on the tribal health care coordination fund and tribal government use of money distributed from the fund. (Section 50-24.1-40(4))
- Receive annual reports from DHS describing enrollment statistics and costs associated with the children's health insurance program state plan. (Section 50-29-02)
- Receive a report from DHS on the system of services for individuals with an intellectual or developmental disability. (Section 5 of House Bill No. 1517 (2019))
- Receive a report prior to July 1, 2020, from DHS on the acute psychiatric and residential care statewide needs plan. (Section 18 of Senate Bill No. 2012 (2019))
- Receive a report prior to October 1, 2020, from DHS on the plan to implement the revised payment methodology for nursing facility services. (Section 19 of Senate Bill No. 2012 (2019))
- Receive a report during the 2019-20 interim from DHS and permanent housing program grant recipients regarding the services provided by the programs, the nonidentifiable demographics of the individuals receiving services, and the other funding or reimbursement being used to support the programs. (Section 22 of Senate Bill No. 2012 (2019))
- Receive a report from DHS on the ongoing work of the department to improve community provider capacity, together with any barriers encountered and a report regarding the system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs. (Section 3 of Senate Bill No. 2247 (2019))
- Receive periodic reports from DHS on the status of the department's administration of county social services programs, including the establishment of human service zones, human service zone budgets, and the indirect cost allocation plan; program changes and any "family first" legislation initiatives; formula payments, and any county employees transferred to the department. (Legislative Management Directive)

Committee members were Representatives Karen M. Rohr (Chairman), Jeff A. Hoverson, Dwight Kiefert, Lisa Meier, Matthew Ruby, Mary Schneider, Kathy Skroch, Bill Tveit, and Greg Westlind and Senators JoNell A. Bakke, Dick Dever, Kathy Hogan, Judy Lee, Tim Mathern, Jessica Unruh-Bell.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## STUDY OF THE OLMSTEAD COMMISSION

Section 33 of Senate Bill No. 2015 (2019) directed a study of issues relating to the North Dakota Olmstead Commission. The study was to include consideration of the implementation of the new Olmstead Commission structure and any emerging Olmstead issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities.

## Previous Study

The 2017-18 interim Health Services Committee studied state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. As part of the study, the committee received information regarding the Olmstead decision and state efforts to comply with the decision. The committee also received updates regarding the restructuring of the Olmstead Commission.

## Background

*Olmstead v. L.C.* 527 U.S. 581 (1999) (*Olmstead*) is a United States Supreme Court case regarding discrimination against people with mental disabilities. In *Olmstead*, the Court found mental illness is a form of disability and unjustified isolation of a person with a disability is a form of discrimination under Title II of the federal Americans with Disabilities Act (ADA). The Court held community placement is required and appropriate only if "[a] the State's treatment professionals have determined that community placement is appropriate, [b] the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and [c] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Since this 1999 decision, there has been litigation in each of the 12 United States Circuit Courts of Appeal. In addition to enforcement of the Olmstead decision through the court system or through agreements, the United States Attorney General published regulations for implementing the requirements of the ADA, including requirements from *Olmstead*, such as Title II, regarding state and local government services, and Title III, regarding public accommodations and commercial facilities.

## Creation of Commission and Development of State Plan

The Olmstead Commission was created in 2001 through an executive order issued by Governor John Hoeven. The order provided the commission was to develop a plan to implement the Olmstead decision by providing appropriate community-based placement for individuals with disabilities in a manner consistent with the needs and resources of the state.

In 2002, the Olmstead Commission held public meetings across the state to gather information on how to serve individuals with disabilities. The commission developed a working plan that included historical information regarding efforts to serve individuals in less restrictive settings and a record of state actions to comply with the Olmstead decision.

Executive orders issued by the Governor in 2010 and 2018 continued the Olmstead Commission and adjusted the membership of the commission. The 2018 executive order also allowed the commission to create subgroups for purposes of seeking expertise and input on community services and supports, health care, housing employment, education, and transportation.

## Olmstead Commission Membership

The 2001 executive order establishing the Olmstead Commission provided for the commission to consist of 13 voting members and for a representative of the Governor's office and the executive director of the Department of Human Services to co-chair the commission. The 2010 executive order adjusted the commission by adding representatives of the Indian Affairs Commission and State Council on Developmental Disabilities and removing representatives from the Office of Management and Budget and Attorney General's office. The 2018 executive order provides for the commission to consist of 10 voting members and 8 nonvoting members with a representative of the Governor's office and a member representing the public to serve as co-chairs. The following schedule summarizes the membership of the commission under each executive order:

<b>Voting Members</b>		
<b>2001 Executive Order</b>	<b>2010 Executive Order</b>	<b>2018 Executive Order</b>
Representative of the Governor's office (co-chair)	Representative of the Governor's office (co-chair)	Representative of the Governor's office (co-chair)
Executive director of the Department of Human Services, or designee (co-chair)	Executive director of the Department of Human Services, or designee (co-chair)	One member of the Senate
One member of the Senate	One member of the Senate	One member of the House of Representatives
Two members of the House of Representatives	Two members of the House of Representatives	Representative of Mental Health America of North Dakota
Representative of Mental Health Association of North Dakota	Representative of Mental Health Association of North Dakota	Representative of the Protection and Advocacy Project
Representative of The Arc of North Dakota	Representative of The Arc of North Dakota	Representative of the Statewide Independent Living Council
Representative of the Protection and Advocacy Project	Representative of the Protection and Advocacy Project	Two representatives of the public (one to serve as co-chair)

<b>Voting Members</b>		
<b>2001 Executive Order</b>	<b>2010 Executive Order</b>	<b>2018 Executive Order</b>
Representative of the American Association of Retired Person (AARP) of North Dakota Representative of the Statewide Independent Living Council Representative of the public Attorney General, or designee  Director of the Office of Management and Budget, or designee	Representative of the AARP of North Dakota  Representative of the Statewide Independent Living Council Representative of the public Representative of the Indian Affairs Commission  Representative of the State Council on Developmental Disabilities	Representative of the State Council on Developmental Disabilities  Representative of the judicial branch
<b>Nonvoting Members</b>		
<b>2001 Executive Order</b>	<b>2010 Executive Order</b>	<b>2018 Executive Order</b>
None	None	Executive director of the Department of Human Services, or designee State health officer, or designee Superintendent of Public Instruction, or designee Commissioner of the Department of Commerce, or designee Executive director of Job Service North Dakota, or designee Director of the Department of Transportation, or designee Indian Affairs Commissioner, or designee Executive director of the Housing Finance Agency, or designee

### **Agency Administration**

From the creation of the Olmstead Commission until June 30, 2019, DHS provided staff services for the commission; however, the department did not receive additional funding or positions for support of the commission. In 2018, an informal advisory group reviewed the structure and operations of the Olmstead Commission and recommended a centralized point of contact be established for the commission. The group determined the Protection and Advocacy Project had the appropriate structure and organization to respond to inquiries, make referrals, and provide education about the Olmstead decision. As a result, the Protection and Advocacy Project requested additional funding in its 2019-21 biennium budget request for a staff person to assist in Olmstead Commission duties. The Legislative Assembly, in Senate Bill No. 2014 (2019), added 1 full-time equivalent (FTE) position and related funding to the budget for the Protection and Advocacy Project for support of the Olmstead Commission. Total funding added was \$238,929, \$164,314 of which is from the general fund.

### **Department of Justice Lawsuit**

The committee was informed that in 2015 the federal Department of Justice (DOJ) received complaints from North Dakota Medicaid recipients residing in skilled nursing facilities who no longer needed skilled care and would prefer to reside at home. The DOJ is continuing to investigate the complaints and has identified certain deficits in services to individuals with physical disabilities. The deficits include an imbalance of state funding provided to skilled nursing facilities compared to home- and community-based services, a lack of providers for community-based services, and a lack of awareness regarding the availability of home- and community-based services. DHS and the Governor's office are negotiating a settlement with the DOJ. Statutory and regulatory changes may be needed as a result of the DOJ settlement.

### **Commission Actions**

The committee was informed prior to the Coronavirus (COVID-19) pandemic, the Olmstead Commission was meeting quarterly and three subcommittees were established to review and define:

1. Commission governance;
2. Availability of and deficits in services for individuals with disabilities; and
3. Scope of commission and work plan.

The commission scheduled community meetings across the state to gather input from individuals regarding their experiences and concerns with services provided to individuals with a disability. However, the community meetings were

postponed due to COVID-19. The commission also worked with the Information Technology Department to develop a website to provide information regarding the rights and responsibilities related to the Olmstead decision and services available to individuals with a disability.

The commission is reviewing the process for an individual to submit a complaint. When a complaint is received, commission staff will gather information and conduct an initial screening assessment. A commission subcommittee will determine if additional information is needed from individuals, providers, or others. After all information is gathered, the Olmstead Commission will meet and an appropriate resolution to the situation will be determined.

### Home- and Community-Based Services

The committee received an update regarding home- and community-based services. There is a range of home- and community-based services available to older adults and individuals with physical disabilities. Services are available through the Service Payments for the Elderly and Disabled (SPED) Program, Expanded SPED program, federal Medicaid 1915(c) waiver, and Medicaid state plan for personal care services. The 2019 Legislative Assembly provided for the expansion of the Aging and Disability Resource Link (ADRL) to include a centralized intake system. The ADRL is used to process and receive home- and community-based referrals and to determine if it is appropriate to assign a case manager to complete a home visit.

### Committee Recommendations

The committee makes no recommendations regarding the study of the Olmstead Commission.

## STUDY OF THE IMPLEMENTATION OF RECOMMENDATIONS OF THE HUMAN SERVICES RESEARCH INSTITUTE'S STUDY OF THE STATE'S BEHAVIORAL HEALTH SYSTEM

Senate Concurrent Resolution No. 4014 (2019) directed a study of the implementation of the recommendations of the Human Services Research Institute's (HSRI) study of North Dakota's behavioral health system. In conducting the study, the committee was to:

1. Receive regular updates on each of the major recommendation areas from the report;
2. Identify the availability, access, and delivery of behavioral health services;
3. Seek input from stakeholders, including law enforcement, social and clinical service providers, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court personnel, educators, tribal governments, and state and local agencies; and
4. Consider options for improving access and the availability for behavioral health care.

Additionally, Section 47 of Senate Bill No. 2012 (2019) provided for the Legislative Management to receive a report before August 1, 2020, from DHS regarding the implementation of the HSRI report recommendations.

### Human Services Research Institute Study and Report

In 2017, DHS contracted with HSRI to conduct a review of the state's behavioral health system. The goals of the study were to conduct an in-depth review of the state's behavioral health system; to analyze current utilization and expenditure patterns by payer source; to provide recommendations for enhancing the integration, cost-effectiveness, and recovery orientation of the system to effectively meet community needs; and to establish strategies for implementing the recommendations. The study gathered data by reviewing existing reports and documents, by conducting stakeholder interviews, and by reviewing Medicaid claims and state service utilization data for behavioral health services.

As a result of the study, the final HSRI report identified 13 recommendations and 65 specific strategies to direct future behavioral health policy and services in the state. The following are the recommendations and strategies included in the report:

Recommendation	Strategy
1. Develop a comprehensive implementation plan	1.1 Reconvene system stakeholders, including service users and their families 1.2 Form an oversight steering committee to coordinate with key stakeholder groups 1.3 Establish workgroups to address common themes identified in this report
2. Invest in prevention and early intervention	2.1 Prioritize and implement evidence-based social and emotional wellness initiatives 2.2 Expand existing substance use prevention efforts, restore funding for the Parents Listen, Educate, Ask, Discuss (LEAD) program 2.3 Build upon and expand current suicide prevention activities 2.4 Continue to address the needs of substance exposed newborns and their parents 2.5 Expand evidence-based services for first-episode psychosis

Recommendation	Strategy
3. Ensure all North Dakotans have timely access to behavioral health services	3.1 Coordinate and streamline information on resources 3.2 Expand screening in social service systems and primary care 3.3 Ensure a continuum of timely and accessible crisis response services 3.4 Develop a strategy to remove barriers to services for persons with brain injury 3.5 Continue to invest in evidence-based harm-reduction approaches
4. Expand outpatient and community-based service array	4.1 Ensure access to needed coordination services 4.2 Continue to shift funding toward evidence-based and promising practices 4.3 Expand the continuum of substance use disorder treatment services for youth and adults 4.4 Support and coordinate efforts to enhance the availability of outpatient services in primary care 4.5 Address housing needs associated with behavioral health needs 4.6 Promote education and employment among behavioral health service users 4.7 Restore/enhance funding for recovery centers 4.8 Promote timely linkage to community-based services following a crisis 4.9 Examine community-based alternatives to behavioral health services currently provided in long-term care facilities
5. Enhance and streamline system of care for children and youth	5.1 Improve coordination between education, early childhood, and service systems 5.2 Expand targeted, proactive in-home supports for at-risk families 5.3 Develop a coordinated system to enhance treatment-related foster care capacity and cultural responsiveness 5.4 Prioritize residential treatment for those with significant/complex needs
6. Continue to implement and refine criminal justice strategy	6.1 Ensure collaboration and communication between systems 6.2 Promote behavioral health training among first responders and others 6.3 Review behavioral health treatment capacity in jails 6.4 Ensure Medicaid enrollment for individuals returning to the community
7. Engage in targeted efforts to recruit and retain competent behavioral health workforce	7.1 Establish a single entity for supporting workforce implementation 7.2 Develop a single database of statewide vacancies for behavioral health positions 7.3 Provide assistance for behavioral health students working in areas of need in the state 7.4 Raise awareness of student internships and rotations 7.5 Conduct comprehensive review of licensure requirements and reciprocity 7.6 Continue establishing training and credentialing program for peer services 7.7 Expand credentialing programs to prevention and rehabilitation practices 7.8 Support a robust peer workforce through training, professional development, and competitive wages
8. Expand the use of telebehavioral health	8.1 Support providers to secure necessary equipment/staff 8.2 Expand the availability of services for substance use disorders, children and youth, and American Indian populations 8.3 Increase types of services available 8.4 Develop clear, standardized regulatory guidelines
9. Ensure the system reflects values of person centeredness, cultural competence, and trauma-informed approaches	9.1 Promote shared decisionmaking 9.2 Promote mental health advance directives 9.3 Develop a statewide plan to enhance commitment to cultural competence 9.4 Identify cultural/language/service needs 9.5 Ensure effective communication with individuals with limited English proficiency 9.6 Implement additional training 9.7 Develop/promote safe spaces for LGBTQ individuals within the behavioral health system 9.8 Ensure a trauma-informed system 9.9 Promote organizational self-assessments
10. Encourage and support the efforts of communities to promote high-quality services	10.1 Establish a state-level leadership position representing persons with lived experience 10.2 Strengthen advocacy 10.3 Support the development of and partnerships with peer-run organizations 10.4 Support community efforts to reduce stigma, discrimination, and marginalization 10.5 Provide and require coordinated behavioral health training among related service systems
11. Partner with tribal nations to increase health equity	Collaborate within and among tribal nations, and with state and local human service agencies
12. Diversify and enhance funding for behavioral health	12.1 Develop an organized system for identifying/responding to funding opportunities 12.2 Pursue 1915(i) Medicaid state plan amendments



Recommendation	Strategy
	12.3 Pursue options for financing peer support and community health workers 12.4 Sustain/expand voucher funding and other flexible funds for recovery supports 12.5 Enroll eligible service users in Medicaid 12.6 Join in federal efforts to ensure behavioral and physical health parity
13. Conduct ongoing, system-side data-driven monitoring of needs and access	13.1 Enhance and integrate provider data systems 13.2 Develop system metrics to monitor progress on key goals 13.3 Identify and target services to those with highest service costs

### Legislative Action Relating to the Final Report

The 2017-18 interim Human Services Committee received updates from DHS and HSRI regarding the study of the state's behavioral health system. The committee recommended Senate Bill No. 2030 (2019) which included a general fund appropriation of \$408,000 and 1.5 FTE positions for the purpose of coordinating the implementation of recommendations of the study of the state's behavioral health system. The bill was not approved but Senate Bill No. 2012 (2019), which was approved by the Legislative Assembly, included a \$300,000 general fund appropriation for the implementation of study recommendations.

### Behavioral Health Funding and Programs

The Legislative Assembly appropriated \$72.4 million to DHS for behavioral health programs for the 2019-21 biennium. This represents an increase in funding of \$28.6 million compared to the 2017-19 biennium appropriations for behavioral health programs as detailed in the schedule below.

	2017-19 Biennium Appropriation	2019-21 Biennium Appropriation	Increase (Decrease)
<b>Behavioral health</b>			
General fund	\$7,975,380	\$21,981,044	\$14,005,664
Other funds	35,853,789	50,420,587	14,566,798
Total	\$43,829,169	\$72,401,631	\$28,572,462

The committee received updates regarding behavioral health programs administered by DHS. DHS has submitted an application for a federal Medicaid 1915(i) state plan amendment. The amendment proposes to provide home- and community-based services to individuals who have a mental illness, a brain injury, or a substance use disorder. Selected services included in the amendment are care coordination, community transitional services, and training for caregivers.

The substance use disorder treatment voucher program began serving individuals in 2016. The program allows individuals to receive substance use disorder treatment services from participating private providers. The 2019-21 biennium appropriation for the program is \$7,997,294. However, as of August 3, 2020, \$7,149,152 has been expended for the program. As a result, the department is not accepting new applications to participate in the program.

The 2019 Legislative Assembly authorized DHS to draft administrative rules for the certification of peer support specialists. The rules were drafted and the department received public comment regarding the rules. The rules provide for the certification of peer support specialists and peer support specialist supervisors.

### Telehealth Services

The committee received information regarding the use of telehealth to provide behavioral health services. A study was conducted in 2017 by the University of North Dakota Center for Rural Health to determine the extent to which telehealth was used to provide behavioral health services. The study determined at least 10 facilities in the state provided telehealth services for behavioral health and 44 facilities received telehealth services. Most respondents reported providing or receiving services for adults rather than children and adolescents.

The Abound Counseling program administered by Lutheran Social Services uses telehealth to provide remote services to individuals in their homes or at partnership locations. Partnerships have been established with school districts, human service centers, and churches to house telehealth equipment. There are 27 partner telehealth locations providing services and 4 additional locations are pending.

Representatives of the State Hospital testified telehealth improves the patient experience by reducing the need to travel, and telehealth can be more cost-effective. The regional human service centers provide more than 700 telebehavioral health services per month. DHS is expanding behavioral health emergency services by offering emergency telehealth options through critical access hospitals and mobile crisis response teams.

### Testimony Received

The committee received testimony and comments from the following stakeholders and providers regarding behavioral health and the implementation of recommendations included in the study of the state's behavioral health system:

- Representatives of the North Dakota Association of Counties expressed support for the continued development of local behavioral health treatment programs. County social services and correctional programs are affected by the lack of local behavioral health services. Some county correctional facilities screen inmates for substance use and mental health issues when entering the facility. Upon completion of the assessment, a specialist visits with the inmate about services needed and referrals are made to the appropriate entities.
- Representatives of the Indian Affairs Commission reported tribal governments are experiencing behavioral health issues and many tribal communities are located in rural areas which affects the recruitment and retention of behavioral health personnel. Some tribes have been developing plans to improve access to services, including the Three Affiliated Tribes of the Fort Berthold Reservation, which recently opened a treatment center in Bismarck.
- Representatives of emergency medical services providers reported 85 percent of first responders have experienced mental health symptoms. They suggested the state develop a program to address the mental health needs of first responders. Testimony indicated some states allow an individual who has behavioral health needs relating to work experiences to receive services without informing the individual's employer.
- Representatives of the North Dakota Medical Association expressed support for the recommendation in the report on the state's behavioral health system to expand outpatient and community-based services. They argued the report recommendation to ensure all citizens have timely access to behavioral health services, including crisis response services, is an important part of the behavioral health system.
- Representatives of the North Dakota Hospital Association stressed the critical role of hospitals across the state in providing mental health and substance use disorder services. Hospital emergency departments often are the primary source of acute care services for people with mental illness and substance abuse issues. Some hospitals have embedded behavioral health specialists within its primary-care practice. Many of the state's hospitals also are using telehealth to provide behavioral health services.
- Representatives of the North Dakota Juvenile Justice State Advisory Group reviewed its contract with the Council of State Governments to conduct a study of the state's juvenile justice system. Although no formal recommendations have been made, initial findings indicate the state uses a punitive approach to unruly youth. The initial findings suggest additional services are needed for these youth earlier so they do not become involved with the juvenile justice system.
- Representatives of the Department of Veterans' Affairs reviewed behavioral health services available for veterans at the Fargo Veterans' Affairs clinic and at eight community-based outreach clinics. Services are provided by psychiatrists, psychologists, advanced practice nurses, social workers, and licensed professional mental health counselors. Veteran centers are located in Bismarck, Fargo, Grand Forks, and Minot, and provide community-based counseling services. The centers provide a wide range of social and psychological services to eligible veterans, active duty service members, and their families. Counseling services also are provided through telehealth to veterans in rural areas of the state. A virtual veterans court was established to identify veterans in the court system and connect them with services. A veterans' affairs justice outreach coordinator will work with prosecutors and judges as a veteran proceeds through the court process. Some approaches to assist the veteran include allowing the veteran to receive treatment while waiting for a court date or having a veteran's criminal charges removed after pleading guilty and receiving treatment. Testimony indicated the services provided to veterans in the court system are designed to identify if military service has contributed to the veteran's involvement in the justice system. Conditions caused by military service, such as post-traumatic stress disorder, may be a factor in the veteran's actions.
- Representatives of the Department of Public Instruction reviewed the department's strategic plan for elementary and secondary education, which identified behavioral health as having a significant impact on student learning. At the time there were increasing challenges with student behavioral health outbursts that were starting to occur at younger ages. Surveys determined student suicide idealization has increased along with suicide attempts. As a result, the Department of Public Instruction chose to partner with DHS to improve behavioral health services in schools. The departments continue to work together to improve school behavioral health services.

### **Implementation of Recommendations**

The committee received updates regarding the status of implementation of recommendations included in the HSRI study of the state's behavioral health system. The Behavioral Health Planning Council, in conjunction with behavioral health stakeholders, is coordinating the development of a strategic plan to implement the recommendations. In December 2018, 570 individuals completed a survey to prioritize the implementation of strategies included in the HSRI report. The top five strategies ranked in the survey were included in the 2019 behavioral health strategic plan.

The top five strategies are:

1. To implement training on trauma-informed approaches for criminal justice staff;

2. To expand in-home community supports;
3. To implement crisis intervention team training for law enforcement officers and emergency medical responders;
4. To review behavioral health treatment capacity in jails and develop a plan to address needs; and
5. To expand school-based mental health and substance use disorder treatment services for youth.

The strategic planning process identified an implementation plan with four phases:

1. Strategic planning.
2. Prioritization and refinement of goals and objectives.
3. Initiate the implementation of goals and objectives.
4. Monitor and sustain the implemented efforts.

The state is in Phases 3 and 4 of the implementation plan. Dashboards are being developed to allow the public to view the implementation progress. The dashboards will be updated quarterly.

### **Committee Recommendations**

The committee makes no recommendations regarding the study of the implementation of recommendations included in the HSRI report on the state's behavioral health system.

### **AUTISM SPECTRUM DISORDER TASK FORCE**

Senate Bill No. 2174 (2009), codified as Section 50-06-32, established an ASD task force consisting of the state health officer, the executive director of the Department of Human Services, the Superintendent of Public Instruction, the executive director of the Protection and Advocacy Project, and the following members appointed by the Governor:

- A pediatrician with expertise in the area of ASD;
- A psychologist with expertise in the area of ASD;
- A college of education faculty member with expertise in the area of ASD;
- A behavioral specialist;
- A licensed teacher with expertise in the area of ASD;
- An occupational therapist;
- A representative of a health insurance company doing business in the state;
- A representative of a licensed residential care facility for individuals with ASD;
- An enrolled member of a federally recognized Indian tribe;
- An adult advocate with ASD;
- A parent of a child with ASD;
- A family member of an adult with ASD; and
- A member of the Legislative Assembly.

The purpose of the task force is to examine early intervention and family support services that would enable an individual with ASD to remain in the least restrictive home-based or community setting, programs transitioning an individual with ASD from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with ASD.

The task force is required to develop a state ASD plan and continue to review and periodically update or amend the plan to serve the needs of individuals with ASD. The task force also is required to provide an annual report to the governor and the Legislative Council regarding the status of the state ASD plan.

### **Report**

The report of the task force stated the task force is working to update the ASD plan to integrate the collective impact design. The collective impact design is a framework that facilitates a collaborative process between multiple

organizations and agencies to strengthen available resources. The task force is in the second of three phases of implementing the design. The task force identified the following draft goals for children from birth through age 18:

- Assure individuals with suspected ASD receive an appropriate diagnosis as soon as possible;
- Review and provide recommendations on the centralized locations for information on ASD; and
- Establish a model identifying training and education opportunities available that address the needs of diverse stakeholders.

The task force also identified the following draft goals for adults age 18 and over:

- Identify the needs and services gaps for adults with ASD;
- Strengthen supports for transitions from adolescent to adult services; and
- Develop more opportunities for adults with ASD to be valued, contributing members of their communities based on their unique strengths, differences, and challenges.

### **AUTISM SPECTRUM DISORDER VOUCHER PROGRAM PILOT PROJECT**

House Bill No. 1038 (2013), codified as Section 50-06-32.1, required DHS to establish a voucher program pilot project beginning July 1, 2014, to assist in funding equipment and general educational needs related to ASD for individuals below 200 percent of the federal poverty level from age 3 to under age 18 who have been diagnosed with ASD. In addition, the department is required to adopt rules addressing management of the voucher program pilot project and to establish eligibility requirements and exclusions for the voucher program pilot project. The section further provides the department is to report to the Legislative Management regarding the pilot project. When enacted, the section included an expiration date of June 30, 2015; however, Section 13 of Senate Bill No. 2012 (2015) provided for the continuation of Section 50-06-32.1.

The 2015 Legislative Assembly provided funding for 53 voucher slots for the 2015-17 biennium; however, funding for 10 slots was removed due to the August 2016 general fund budget reductions. The 2017 Legislative Assembly restored funding for the voucher slots to provide for 53 voucher slots for the 2017-19 biennium. The 2019 Legislative Assembly also provided funding for 53 voucher slots for the 2019-21 biennium. Funding of \$1,075,088 from the general fund was appropriated for the program for each of the 2017-19 and 2019-21 bienniums. Section 46 of Senate Bill No. 2012 (2019) provides DHS is to propose changes to North Dakota Administrative Code to increase program flexibility to serve more families within existing appropriations. The section provides the proposed rules should consider changes that include a voucher solely for technology support and one for in-home supports, adding case management or parent-to-parent support as an allowable service for voucher funds, and reducing the amount of time during which a household may use approved voucher funds.

### **Report**

The Department of Human Services reported the ASD voucher program began on July 1, 2014, to assist in funding equipment and general educational needs for individuals with incomes below 200 percent of the federal poverty level from age 3 to under age 18 who have been diagnosed with ASD. The voucher may not exceed \$12,500 for a fiscal year and any unused funds are returned to the program. The report indicated 126 children have participated in the program since it began. During state fiscal year 2020, there was an average expenditure of \$3,187 per child.

During the 2017-19 biennium, approximately 30 percent of the program appropriation was expended. The 2019 Legislative Assembly authorized DHS to consider administrative code changes that included adding a voucher solely for technology support, adding a voucher for in-home supports, adding case management or parent-to-parent support as an allowed service, and reducing the amount of time during which a household may use approved voucher funds. The Department of Human Services consulted with the ASD task force on the proposed administrative code changes and the changes became effective April 1, 2020.

### **DEVELOPMENTAL DISABILITIES SYSTEM REIMBURSEMENT PROJECT**

Section 50-06-37, as enacted by Senate Bill No. 2043 (2011), required DHS, in conjunction with developmental disabilities providers, to develop a prospective developmental disabilities payment system based on the support intensity scale. A steering committee was created to guide DHS on the development of the new payment system. The new payment system was implemented on April 1, 2018. The new system is based on a needs assessment for each individual served and rates that are standardized for all providers.

Section 50-06-37 was amended by Senate Bill No. 2247 (2019) to provide DHS maintain the payment system based on a state-approved assessment. A steering committee of no more than 18 individuals is to be used to provide guidance for the system. The steering committee must include no more than two clients, no more than one family member of a

client, a representative of DHS, and a representative of the Protection and Advocacy Project. The steering committee is to analyze appropriate data and recommend to DHS any rate adjustments, resource allocation modifications, or process assumptions. The department and the steering committee are to report developmental activities and state information to the Legislative Management.

**Report**

A representative of DHS serving on the steering committee reported DHS contracted with a vendor in April 2019 to review the new payment rate structure and methodology to determine the appropriateness of assumptions and to recommend potential adjustments to the system. Key findings of the review include:

- Increase the program support component of medically fragile residential habilitation rates to represent the hours of nursing relative to the hours of direct support professionals for each acuity tier;
- Remove the 4 percent absences factor applied to every base residential rate and replace it with a 30-day personal assistance retainer policy;
- Add a 2 percent vacancy factor to the residential and intermediate care facility rate to account to vacancy costs; and
- Provide for systemwide changes in support intensity scales and overall rate changes to mitigate support intensity scales for day services, residential habilitation services, and intermediate care facility services.

**MEDICAID EXPANSION PROVIDER REIMBURSEMENT RATES**

Section 7 of Senate Bill No. 2012 (2019) continues the Medicaid Expansion program through June 30, 2021. The section provides for the contract between DHS and the insurance carrier to include a provision for the carrier to provide DHS with provider reimbursement rate information when selecting a carrier. The section also requires DHS to provide the Legislative Management a report regarding provider reimbursement rates under the medical assistance expansion program. The report may include trend data, but may not disclose identifiable provider reimbursement rates.

**Report**

Representatives of DHS reported Medicaid Expansion provider service rates in 2018 were 65.8 to 108 percent higher than provider rates under the traditional Medicaid program and rates overall were 77.8 percent higher. The following schedule details the percentage for each service that Medicaid Expansion rates were above traditional Medicaid rates in 2018.

Service	Percentage Medicaid Expansion Rates Exceeded Traditional Medicaid Rates
Inpatient	65.8%
Outpatient	108.0%
Professional	68.2%
Overall	77.8%

**TRIBAL HEALTH CARE COORDINATION FUND**

Section 50-24.1-40, as enacted in House Bill No. 1194 (2019), provides for DHS to facilitate care coordination agreements between health care providers and tribal health care organizations that will result in 100 percent federal funding for eligible medical assistance provided to an American Indian. The section created a tribal health care coordination fund and provided any funding received in excess of the state's regular share of federal medical assistance funding due to a care coordination agreement is to be deposited 60 percent in the tribal health care coordination fund and 40 percent in the general fund. Money in the tribal health care coordination fund is appropriated on a continuing basis for distribution to tribal governments in accordance with agreements between DHS and the tribal governments. The agreements must require the tribal governments to use funding distributed from the tribal health care coordination fund for health-related purposes, which may include population health programs or services, marketing or education-related to health programs or services, and developing or enhancing community health representative programs or services. Funding may not be used for capital construction, stipends to individuals for services, or services covered by the federal Indian Health Services, Medicaid, or other third-party payers or programs. The agreements between DHS and tribal governments also must require tribal governments to submit annual reports to DHS regarding the use of money distributed from the tribal health care coordination fund. Tribal governments also must submit an audit report to DHS every 2 years which relates to the use of funding distributed from the tribal health care coordination fund.

The Department of Human Services is to provide to the Legislative Management before August 1 of each even-numbered year a report regarding the tribal health care coordination fund including how participating tribal governments used funding distributed from the fund.

## **Report**

The Department of Human Services reported the department entered health care coordination agreements with two tribes; however, the agreements are inactive due to concerns from tribal governments.

Representatives of the Indian Affairs Commission reported tribal governments have expressed concern the percentage of funding deposited in the tribal health care coordination fund is too low. There also are concerns increased staffing would be needed at tribal health care facilities to administer the agreements. Another concern is funding distributed from the tribal health care coordination fund is not allowed to be used for construction purposes.

## **CHILDREN'S HEALTH INSURANCE PROGRAM**

Section 50-29-02 provides DHS is to prepare, submit, and implement a children's health insurance program state plan and report annually to the Legislative Management. The report must include enrollment statistics and costs associated with the plan.

Healthy Steps, North Dakota's children's health insurance plan, provides premium-free health coverage to uninsured children in qualifying families. The program is intended to help meet the health care needs of children from working families that earn too much income to qualify for full Medicaid coverage, but not enough to afford private insurance. To be eligible for the program, the family's net income may not exceed 175 percent of the federal poverty level.

The 2019 Legislative Assembly appropriated \$12,821,689, of which \$3,225,725 is from the general fund, for the Healthy Steps program for the 2019-21 biennium. This level of appropriation is based on an estimated average annual enrollment of 2,154 the 1<sup>st</sup> year of the biennium and an estimated average annual enrollment of 2,180 the 2<sup>nd</sup> year of the biennium.

## **Report**

Representatives of DHS reported through June 2020, the program has spent \$5,552,235, or 43 percent, of its budget. Monthly enrollment in the program has increased from 2,071 in December 2019 to 2,398 in June 2020.

The committee was informed Senate Bill No. 2106 (2019) allowed DHS to transfer the children's health insurance program (CHIP) from a managed care program to a fee-for-service arrangement. The transition date was January 1, 2020. The change to a fee-for-service arrangement is estimated to save the state \$6.1 million per biennium, of which \$1.9 million is from the general fund. The Department of Human Services reduced 1 FTE position for the administration of the CHIP program by transferring the program to a fee-for-service arrangement and savings also were realized by not contracting for actuarial services required under the managed care arrangement.

## **SYSTEM OF SERVICES AND PROVIDER CAPACITY FOR INDIVIDUALS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY**

House Bill No. 1517 (2019) directs DHS to establish regional crisis support services for individuals with an intellectual or developmental disability. The bill also directs the department to conduct the standardized assessment of eligible individuals residing at the Life Skills and Transition Center. Section 5 of the bill requires DHS to provide a report to the Legislative Management regarding services for individuals with an intellectual or developmental disability. The report is to include:

1. The ongoing work of the department to improve community provider capacity, including any barriers encountered and policy review; and
2. The system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs.

Section 3 of Senate Bill No. 2247 (2019) provides legislative intent that DHS continue to work with community providers to continuously improve community provider capacity to serve clients in the least restrictive appropriate setting. The department is to provide the Legislative Management a status report on the ongoing work of the department to improve community provider capacity, together with any barriers encountered. The department also is to provide a report to Legislative Management regarding the system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs.

## **Report**

Representatives of DHS presented an overview of services available for individuals with an intellectual or developmental disability. The regional human service centers provide services to approximately 5,800 individuals with an intellectual or developmental disability. Individuals also may receive services through 38 providers currently licensed by DHS. The Life Skills and Transition Center provides intermediate care services and statewide crisis services.

The Department of Human Services' Clinical Assistance Resource and Evaluation Service (CARES) located at the Life Skills and Transition Center provides resources across the state to allow individuals with disabilities to reside in their preferred community. The CARES program also provides crisis services statewide.

The Department of Human Services' Developmental Disabilities Division administers several programs to assist individuals with an intellectual or developmental disability. Programs include:

Service Area	Programs
Infants and toddlers	<ul style="list-style-type: none"> <li>• Birth review program</li> <li>• Right track program</li> <li>• Early intervention services</li> </ul>
Family support	<ul style="list-style-type: none"> <li>• In-home support</li> <li>• Self-directed services</li> <li>• Extended home health care</li> </ul>
Children and adult services	<ul style="list-style-type: none"> <li>• Residential</li> <li>• Employment</li> <li>• Day habilitation</li> <li>• Corporate guardianship</li> <li>• Intermediate care facilities</li> </ul>

The department did not identify any barriers relating to community provider capacity or any unmet service needs.

### ACUTE PSYCHIATRIC AND RESIDENTIAL CARE STATEWIDE NEEDS PLAN

Section 18 of Senate Bill No. 2012 (2019) (which was further amended by Section 30 of Senate Bill No. 2015 (2019)) requires DHS to develop a statewide plan to address acute psychiatric and residential care needs. The plan must address the following:

1. The size and use of the State Hospital;
2. The potential need for state-operated or private acute facilities in areas of the state outside the city of Jamestown;
3. The potential to expand private providers' offering of acute psychiatric care and residential care to fulfill the identified need, including how the implementation of services authorized by the 2019 Legislative Assembly affects the balance of inpatient, residential, and community-based services;
4. The impact of department efforts to adjust crisis services and other behavioral health services provided by the regional human service centers; and
5. The potential use of available Medicaid authorities, including waivers or plan amendments.

The Department of Human Services was required to provide a report to the Legislative Management before July 1, 2020, regarding the plan and any legislation necessary to implement the plan.

### Report

The Department of Human Services contracted with the HSRI to conduct the study and to analyze the condition of State Hospital facilities and options to construct a new State Hospital facility. The study focused on the size and use of the State Hospital, the need for psychiatric facilities outside the city of Jamestown, the ability for private providers to offer additional psychiatric services, the effect of the DHS efforts to increase crisis and other behavioral health services at regional human service centers, and the potential use of available Medicaid waivers and state plan amendments.

The following are the recommendations that resulted from the HSRI study of the state's acute psychiatric and residential care statewide needs:

Study Area	Key Recommendations
Size and use of the State Hospital	<ol style="list-style-type: none"> <li>1. A new 75- to 85-bed facility should be constructed.</li> <li>2. Demand for the rehabilitation function of the State Hospital may be alleviated by expanding the availability of partial hospital programs.</li> <li>3. Problems with access to behavioral health services reported by critical access hospitals should be investigated.</li> </ol>
Need for state-operated or private acute facilities outside the city of Jamestown	Options should be explored to establish a small number of beds to serve a combination of adults and youth in the northwestern part of the state. Options to contract with an existing inpatient facility for the beds should be reviewed.
Expansion of private providers offering of acute	<ol style="list-style-type: none"> <li>1. Expansion efforts should focus on increased capacity for outpatient treatment that reduces the demand for inpatient treatment.</li> </ol>

Study Area	Key Recommendations
psychiatric and residential care needs  Effect of DHS efforts to expand crisis and other behavioral health services at regional human service centers  Potential use of Medicaid waivers and plan amendments	<ol style="list-style-type: none"> <li>2. Expansion of services should be accompanied by the goal of increased efficiency.</li> <li>3. Federally qualified health clinics and critical access hospitals may provide increased access in less populated areas.</li> <li>4. Assessment of geographic distribution is needed along with expansion.</li> <li>1. Offering additional and enhanced behavioral health services should be accompanied by thorough data collection and monitoring to assess the impact on emergency department and hospital diversion.</li> <li>2. Consideration should be given to contracting for residential beds until the effects of service changes are known.</li> <li>3. Care criteria should be reviewed and utilization management processes enhanced to ensure appropriate level of care assignment.</li> <li>4. Community stability should be monitored when transferring individuals from residential programs to less intensive settings.</li> <li>5. Permanent housing supports should be maximized.</li> <li>6. Service utilization should be monitored across the entire behavioral health system.</li> <li>7. A comprehensive and integrated crisis response system could monitor individuals through care transitions and more efficiently identify available capacity.</li> </ol> <p>A Medicaid Institution for Mental Disease waiver should not be sought by the state which may increase inpatient capacity and is counter to the report recommendations of increased community-based services.</p>

### **NURSING FACILITY SERVICE PAYMENT METHODOLOGY**

Section 19 of Senate Bill No. 2012 (2019) requires DHS to develop and implement a plan for a revised payment methodology for nursing facility services. The plan must include recommendations for:

1. Methods of reimbursement for nursing facility cost categories, including direct patient care, administrative expenses, and capital assets;
2. Considerations regarding establishing peer groups for payments based on factors such as geographical location or nursing facility size;
3. The feasibility and desirability of equalizing payments for nursing facilities in the same peer group, including the time frame for equalization; and
4. Payment incentives related to care quality or operational efficiency.

The executive director of DHS and representatives of the nursing facility industry must appoint a committee to advise the department in developing the revised payment methodology. The department was required to provide a report to the Legislative Management before October 1, 2020, regarding the plan to implement the revised payment methodology. The estimated costs related to the implementation of the revised payment methodology must be included in the department's 2021-23 biennium budget request submitted to the Legislative Assembly.

#### **Report**

Representatives of DHS reported the department, with advice from representatives of the nursing facility industry, developed an implementation plan for a revised payment methodology for nursing facility services. The report stated the goals of the new payment methodology are to incentivize operating efficiency, promote building improvements, reduce variation in rates, and decrease the state's financial liability.

The recommended payment methodology for nursing care costs is price-based. Rates in a price-based system are set prospectively using historical costs adjusted to the rate year. Nursing facilities that operate below the set price retain the differential up to a margin cap. Nursing facilities that operate above the set price would realize a loss. The recommended payment methodology would set a margin cap of 3.46 percent and provide hold harmless funding payments until nursing facility rates are rebased. The total estimated cost of the hold harmless payments is \$4.1 million for the 2021-23 biennium.

The recommended payment methodology would use a fair rental value calculation to determine property rates. A daily fair rental value rate would be set prospectively based on the facility replacement cost less depreciation. The net facility cost would be multiplied times a rental rate. The total estimated 2021-23 biennium cost of the proposed property model is \$3.1 million.



## **PERMANENT HOUSING PROGRAM GRANTS**

Section 22 of Senate Bill No. 2012 (2019) identifies \$925,000 from the general fund included in the DHS budget for grants to entities to provide housing services to individuals in the northeast and southeast human service regions. The department is to develop and implement standardized processes for the distribution of the permanent housing grants. Grant funds may be used only for services not reimbursed by other funding sources. The department, along with entities receiving the grants, were required to provide reports to the Legislative Management regarding services provided by the programs, demographics of individuals receiving services, and other funding or reimbursement being used to support the programs.

### **Report**

Representatives of the Grand Forks Housing Authority reviewed its permanent housing support program at the LaGrave on First apartment complex in Grand Forks. The grant funds are used to pay for housing support specialist staff at the complex. The staff are mental health technicians who provide continuous mental health and tenancy services at the complex. From September 1, 2019, through March 12, 2020, 43 individuals have been served through the program. Of those served, 14 had mental health concerns, 17 had alcohol dependency issues, 7 had drug abuse issues, 5 had a chronic health condition, 5 had a developmental disability, and 6 had a physical disability.

Representatives of the Dacotah Foundation reviewed the services it provides at the Cooper House permanent supportive housing facility in Fargo. Services provided include crisis intervention, emergency management, de-escalation, tenant support, and safety monitoring. From September 1, 2019, through March 12, 2020, 44 individuals have been served through the program. Of those served, 29 had mental health concerns, 26 had alcohol dependency issues, 13 had a chronic health condition, 1 had a developmental disability, and 14 had a physical disability.

## **COUNTY SOCIAL AND HUMAN SERVICES PROJECT**

In Senate Bill No. 2124 (2019), the Legislative Assembly approved a new social and human service delivery system. Key components of the system include:

- Up to 19 multicounty zones may be established for the delivery of human services. Counties with a population over 60,000 may be a single county zone.
- A human service zone board, comprised of county commissioners and other local officials, govern each zone. The board may not exceed 15 members appointed by county commissioners with at least one commissioner from each county serving on the board.
- Each human service zone board must hire a human service zone director to serve as presiding officer of the board and to oversee the operations of the human service zone.
- Funding formula payments for direct costs will be provided to each zone which are based on fiscal year 2018 data.
- Up to 33 full-time equivalent employees may be transferred from counties to DHS if one or more human service zones transfer duties to the department. Funding formula payments may be withheld from a zone for any duties transferred to the department.
- Up to 107 FTE employees may be transferred from counties to DHS for specific positions that provide services to the zones.

Pursuant to a Legislative Management directive, the committee was to receive periodic reports from DHS on the status of the department's administration of county social service programs, including the establishment of human service zones, human service zone budgets, and the indirect cost allocation plan; program changes and any "family first" legislation initiatives; formula payments, and any county employees transferred to the department.

### **Report**

Representatives of DHS reported on the collaboration with counties to form human service zones effective January 1, 2020. Zone directors were to be hired by March 31, 2020, and each zone was to complete an operations plan by June 30, 2020. The first payment to human service zones was made in January 2020, and the second zone payment was made in June 2020. Payments made in 2020 are estimated to total \$91.6 million and 2021 payments are estimated to total \$91.4 million. The total estimated payments are \$9.3 million more than the amount appropriated for the program; however, DHS estimates \$10.3 million of payments will be offset due to zone fund balances exceeding allowable amounts. The department anticipates salaries and benefits costs will exceed estimates by \$13.9 million, indirect costs will exceed estimates by \$6.3 million, and operating expenses will be \$10.8 million less than estimated. A total of 112 positions have been transferred from counties to DHS to date. The positions relate to early childhood services (22), home- and community-based services case management (60), long-term care eligibility (16), child welfare quality control (10), and administration of zone activities (4).

Representatives of the North Dakota Association of Counties informed the committee one major issue is the employee benefit packages offered by various counties. Benefit packages vary by county and zone employee benefits will be administered by the host county. This may affect an employee's benefit coverage level as well as how much counties pay for employee benefits. Additionally, they suggested indirect costs for items such as travel and office costs will be an issue that needs to be addressed by the 2021 Legislative Assembly.

Representatives of DHS also provided updates regarding the federal Family First Prevention Services Act. The Act adjusts how states may use federal Title IV-E funds for programs such as foster care and kinship care. The Act also allows funding to be used for preventative services. The Department of Human Services is partnering with law enforcement agencies, tribal governments, states' attorneys, schools, hospitals, and providers to implement the new program requirements.

# INFORMATION TECHNOLOGY COMMITTEE

North Dakota Century Code Section 54-35-15.1 requires the Legislative Management during each biennium to appoint an Information Technology Committee in the same manner as the Legislative Management appoints other interim committees. The committee consists of six members of the House of Representatives and five members of the Senate. The chief information officer (CIO) of the state serves as an ex officio nonvoting member of the committee.

Pursuant to Section 54-35-15.2 the committee's responsibilities include:

1. Meet at least once each calendar quarter.
2. Receive reports from the CIO.
3. Review the activities of the Information Technology Department (ITD).
4. Receive and review information related to information technology (IT) projects with a total cost of \$500,000 or more, including startup and closeout reports.
5. Receive and review information regarding any IT project of an executive branch agency with a total cost of between \$100,000 and \$500,000 as determined necessary by ITD.
6. Receive a report from the CIO regarding the recommendations of the State Information Technology Advisory Committee (SITAC) relating to the prioritization of proposed major IT projects and other IT issues.
7. Receive information from the State Board of Higher Education regarding higher education IT planning, services, and major projects.

Section 54-35-15.3 authorizes the Information Technology Committee to review any IT project or IT plan. If the committee determines a project or plan is at risk of failing to achieve its intended results, the committee may recommend the Office of Management and Budget (OMB) suspend the expenditure or funding appropriated for a project or plan. This duty did not require action by the Information Technology Committee during the 2019-20 interim.

Section 54-35-15.4 provides the Information Technology Committee may request the State Auditor to conduct an IT compliance review, including an agency's IT management and planning as well as compliance with IT plans and standards. This duty did not require action by the Information Technology Committee during the 2019-20 interim.

The committee is responsible for receiving various reports, including:

- A report from the State Board of Higher Education regarding higher education IT planning, services, and major projects. (Sections 15-10-44 and 54-35-15.2)
- A report from the CIO regarding the recommendations of SITAC relating to the prioritization of proposed major IT projects and other IT issues. (Sections 54-35-15.2 and 54-59-02.1)
- A report from the CIO regarding the coordination of services with political subdivisions and a report from the CIO and the CIO of the North Dakota University System regarding coordination of IT between ITD and higher education. (Section 54-59-12)
- The annual report from ITD. (Section 54-59-19)

In addition to its direct statutory responsibilities for the 2019-20 interim, the Legislative Management assigned the committee the following responsibilities:

- Receive a report from the Statewide Longitudinal Data System Committee on the status of the statewide longitudinal data system (SLDS), including recommendations for further development, cost proposals, proposals for legislation, and data sharing governance. (Section 54-59-36)
- Receive a report from the Emergency Services Communications Coordinating Committee before November 1, 2020, regarding the use of assessed communications services fee revenue and recommendations for changes to the operating standards for emergency services communications. (Section 57-40.6-12)
- Receive a report from the State Department of Health (DOH) before July 1, 2020, regarding the implementation of electronic access to vital records. (Section 7 of House Bill No. 1004 (2019))
- Receive a report from the Commissioner of University and School Lands regarding the status of the IT project. (Section 10 of House Bill No. 1013 (2019))

- Study ITD's transition to the run-grow-transform model and the IT unification initiative. (Section 7 of House Bill No. 1021 (2019))
- Receive a report by September 1, 2020, from ITD regarding its review of service rates charged to state agencies. (Section 9 of House Bill No. 1021 (2019))
- Receive a report from the CIO, before June 1 of each even-numbered year, regarding the implementation of distributed ledger technologies. (Section 1 of House Bill No. 1048 (2019))
- Receive a report during the 2019-20 interim from ITD regarding internal local area network services provided for higher education campus housing. (Section 1 of Senate Bill No. 2318 (2019))
- Study the potential benefit value of blockchain technology implementation and utilization in state government. (House Concurrent Resolution No. 3004 (2019))

Committee members were Representatives Corey Mock (Chairman), Glen Bosch, Shannon Roers Jones, Nathan Toman, Don Vigesaa, and Robin Weisz; Senators Kyle Davison, Merrill Piepkorn, Larry J. Robinson, Shawn Vedaa, and Terry M. Wanzek; and Citizen Member Shawn Riley.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## STUDY OF INFORMATION TECHNOLOGY UNIFICATION

### Background Information

The Legislative Management assigned the committee the responsibility of studying ITD's transition to the run-grow-transform model and the IT unification initiative pursuant to Section 7 of House Bill No. 1021 (2019). The study was to include a review of changes in fees, services, operations, processes, and system.

The 2019 Legislative Assembly approved a transfer of 96 full-time equivalent (FTE) IT positions from five agencies for the 2019-21 biennium, which included a reduction of salaries and wages in each agency transferring FTE positions to ITD and an increase in operating expenses to allow the agency to pay ITD for the salaries and wages of the FTE positions, including compensation increases authorized by the Legislative Assembly. The following positions were transferred to ITD:

Budget No. - Agency	FTE Increase (Decrease)
226 - Department of Trust Lands (DTL)	2.00
325 - Department of Human Services (DHS)	48.00
540 - Adjutant General, Department of Emergency Services	4.00
750 - Parks and Recreation Department	1.00
801 - Department of Transportation (DOT)	41.00
<b>Total</b>	<b>96.00</b>

Section 8 of House Bill No. 1021 (2019) provided legislative intent that ITD provide direction to the executive branch agencies in the Governor's cabinet not included in the IT unification initiative pilot project. The 15 agencies taking operational and strategic IT direction from ITD during the 2019-21 biennium are--the Governor's office, OMB, DOH, the Department of Environmental Quality, the Indian Affairs Commission, Job Service North Dakota (JSND), the Department of Labor and Human Rights, the Department of Financial Institutions (DFI), the Securities Department, Workforce Safety and Insurance (WSI), the Highway Patrol, the Department of Corrections and Rehabilitation, the Department of Commerce, the Game and Fish Department, and the Bank of North Dakota. The Bank is voluntarily receiving operational and strategic IT direction from ITD.

In August 2020, the Legislative Council surveyed the five agencies selected for the 2019-21 biennium IT unification initiative pilot project. The survey results provided the committee with a comparison of the agencies estimated 2019-21 biennium IT expenditures with and without IT unification, including information regarding actual 2017-19 biennium IT expenditures and estimated 2021-23 biennium IT expenditures. The information does not include federal funding received as a result of the Coronavirus (COVID-19) pandemic, major IT projects, one-time funding for IT initiatives, or other IT costs, such as expenditures paid to third-party vendors or other IT expenditures indirectly related to IT unification. A summary of the total expenditures reported by the agencies is shown below:

	2017-19 Biennium Actual IT Expenses	2019-21 Biennium Estimated IT Expenses Without Unification	Fiscal Year 2020 Actual IT Expenses	Fiscal Year 2021 Estimated IT Expenses	Total 2019-21 Biennium Estimated IT Expenses With Unification	Difference - 2019-21 Biennium Estimates - With and Without Unification	2021-23 Biennium Estimated IT Expenses
Total	\$65,642,746	\$85,613,538	\$40,315,840	\$46,271,297	\$86,587,137	\$973,599	\$107,598,258
Increase		\$19,970,792			\$20,944,391		\$21,011,121
Percent increase		30.4%			31.9%		24.3%

### Information Technology Department

The committee received information from ITD regarding the run-grow-transform model, the 2019-21 biennium IT unification initiative pilot project, and future IT unification initiatives.

#### Run-Grow-Transform Model

The run-grow-transform model is a guide for spending money and dedicating IT resources. The model includes a redistribution of IT resources from running operations to growing and transforming IT. Growing IT resources includes expanding existing services and transforming IT resources including fundamentally changing IT organizations. The IT functions in the run-grow-transform model often change, meaning a function that grows or transforms IT today may be part of running operations tomorrow.

#### 2019-21 Biennium Information Technology Unification

The committee received information regarding the effect of the IT unification initiative approved for the 2019-21 biennium on fees, services, operations, processes, and systems. The process to incorporate the new 96 FTE positions included a review of benefits, policies, operating procedures, and human resource-related matters. The Information Technology Department reported a challenge of transferring the new FTE positions to ITD was reconciling human resource policies between ITD and the employee's former employing agency.

The Information Technology Department will measure the success of the 2019-21 biennium IT unification pilot project by evaluating IT mission alignment, cost management, risk containment, processes, tools, contracts, FTE positions, cost of units of service, and volume purchasing efficiency.

#### Future Information Technology Unification

The committee received information regarding proposed IT unification for the 2021-23 biennium and future bienniums, including the effect on fees, services, operations, processes, and systems. The Information Technology Department will propose the IT unification of all Governor's cabinet agencies and the Bank of North Dakota during the 2021 legislative session, including the transfer of 66 FTE positions to ITD.

The Information Technology Department intends to seek unification of the entire executive branch after the 2021-23 biennium. Agencies not in the Governor's cabinet that have discussed the possibility of unifying IT staff with ITD include the Department of Public Instruction (DPI), Secretary of State, Retirement and Investment Office, Public Employees Retirement System, State Historical Society, Insurance Commissioner's office, Industrial Commission, Public Service Commission (PSC), and State Water Commission (SWC). The Information Technology Department also may request DTL unify the department's remaining FTE IT position. These 10 agencies have a combined 25 FTE IT positions that could be transferred to ITD if future IT unification initiatives are approved.

Agencies that have not discussed the possibility of unifying IT staff with ITD include the Attorney General, the Housing Finance Agency, the Department of Career and Technical Education, the School for the Blind, the School for the Deaf, the State Library, and the Tax Department, which have a combined 36 FTE IT positions.

The Information Technology Department estimates IT unification could save the state \$640 million per biennium in salaries and benefits due to automation and process redesign being performed by IT instead of staff. These initiatives could lead to FTE positions being reprioritized for other work needed by agencies or potentially being eliminated. To realize the estimated \$640 million per biennium salaries and benefits savings, ITD would need approximately \$230 million, of which \$120 million would be to replace old technology, \$65 million would be for process automation of manual tasks, and \$45 million would be for business analysts to update state agency processes.

#### Agencies in Support of Information Technology Unification

The committee received information from DOT, DHS, and DTL regarding the agencies' inclusion in the IT unification pilot project for the 2019-21 biennium, including any department benefits, issues, or concerns of IT unification and any cost-savings realized as a result of IT unification. The committee received information from DOH, JSND, WSI, and the

Bank of North Dakota regarding benefits, issues, and concerns of IT unification, and the agency's interest in being included in future IT unification initiatives.

### **Department of Transportation**

Prior to the approval of the IT unification initiative, some of the 41 DOT IT staff were concerned with unification, primarily due to the IT staff being required to transfer to a different agency. The Department of Transportation and ITD worked together during the transfer of IT staff to address staff concerns related to benefits, leave balances, personnel files, background checks, and work weeks. According to the information provided to the committee, DOT has not experienced a reduction in the level of IT services provided to DOT as a result of IT unification. The Department of Transportation indicated additional time will be needed to evaluate the cost-effectiveness of the unification initiative pilot project.

### **Department of Human Services**

The Department of Human Services welcomed IT unification because instead of having three IT budgets--for DHS staff, ITD, and third-party vendors--DHS now only has two IT budgets for ITD and third-party vendors. While there have been challenges with IT unification, the challenges were expected and DHS and ITD have responded to the challenges appropriately.

### **Department of Trust Lands**

The unification of IT FTE positions was mostly beneficial for DTL. A combination of unification, new cloud-based software systems, and a new website platform has resulted in IT efficiencies for DTL. A benefit of having 2 of DTL's 3 FTE IT positions being transferred to ITD is that those individuals will have additional opportunities for promotion due to ITD having a larger IT staff. However, the unification initiative has resulted in a delay of services by requiring DTL to submit a service request to ITD rather than having department staff address IT concerns directly. Other issues regarding IT unification include projected expenses for the 2019-21 biennium being approximately \$181,017 more than if DTL would not have unified with ITD. The 2 FTE programmer analyst positions transferred to ITD often are not available to work on DTL's land management system, resulting in DTL relying on the department's remaining FTE IT position for many of its priority DTL IT needs. Another concern of IT unification is a lack of cross-training for ITD programmers who are knowledgeable about department systems and if the 2 programmers transferred to ITD are not available, DTL has no one to maintain and fix department systems. The Department of Trust Lands does not anticipate IT savings as a result of IT unification until the 2023-25 biennium.

### **State Department of Health**

Communication and coordination of projects are potential concerns of future IT unification initiatives, as well as a concern regarding the loss of IT expertise in DOH. The Information Technology Department has attempted to address these concerns by developing a key customer management process to connect the two departments.

Information technology unification would allow DOH to dedicate more resources to transforming and growing technology rather than running technology and bring consistency to DOH products and processes, such as software licensure, electronic filing of documents, and product development and utilization. The State Department of Health believes there are more benefits of IT unification than issues or concerns; therefore, DOH would be interested in future IT unification initiatives.

### **Workforce Safety and Insurance and Job Service North Dakota**

The biggest challenge of IT unification for WSI and JSND relates to funding. Job Service North Dakota is 98 percent federally funded and WSI receives 100 percent of its funding from special funds from employer premiums. These funding sources will need to be considered if the two agencies are selected for future IT unification initiatives and FTE positions are transferred to ITD. If IT costs increase, JSND does not have additional federal funds to address the additional IT costs and an increase in employer unemployment insurance premiums may be necessary for WSI.

The agencies believe IT unification would add value to the agencies and the state by strengthening the level of services provided by leveraging knowledge, ensuring collective compliance, monitoring services, and providing data security and cybersecurity. The agencies would be interested in future IT unification initiatives.

### **Bank of North Dakota**

The Bank of North Dakota volunteered for future IT unification initiatives due in part to several Bank IT staff having recently sought employment opportunities with ITD. The Bank has 16 FTE IT positions that could be transferred to ITD. The Information Technology Department started the start-stop-continue review process for these IT positions in December 2019. The Bank signed a memorandum of understanding with ITD in January 2020 to document the two agencies' commitment to working together.

The benefits identified by the Bank of North Dakota of unifying its IT staff with ITD include allowing Bank IT staff more career opportunities and having access to better software tools and more cybersecurity resources. The committee was informed IT unification will not result in any additional costs to the Bank in the foreseeable future but IT expenditures are expected to decrease several years after unifying with ITD. The agencies have focused on aligning information security, technology services, application support, data management, and project management. The Bank's IT unification concerns include the maturity of ITD data management services, resourcing of project management, whether costs will be cost neutral, and the challenge of transferring staff to ITD because Bank staff are unclassified employees while ITD staff are classified employees.

### **Agencies Not in Support of Information Technology Unification**

The committee received information from the Attorney General's office, PSC, DPI, and SWC regarding benefits, issues, and concerns of IT unification, and the agency's interest in being included in future IT unification initiatives.

#### **Attorney General**

The Attorney General does not support unifying Attorney General IT staff with ITD because the Attorney General's office, as a North Dakota law enforcement agency, must comply with criminal justice IT standards and regulations of federal agencies, such as the Federal Bureau of Investigation. The Attorney General has 19 FTE IT positions.

#### **Public Service Commission**

The Public Service Commission does not support unifying its IT staff with ITD because IT unification is not in the best interest of the agency, the industries the agency represents, or North Dakota citizens. The agency supports continued collaboration with ITD, but believes it is important to maintain IT staff within PSC. There are 3 FTE IT positions in PSC.

#### **Department of Public Instruction**

The Department of Public Instruction began a review of department IT personnel with ITD in November 2019 for possible IT unification. The department has 7 FTE IT positions, including 3 FTE programmer analyst positions.

The benefits of unification reported by DPI include the potential for sharing methods, practices, and expertise with other state agencies, possible efficiencies, technology alignment, and possible cost-savings. Department of Public Instruction questions and concerns of IT unification include how IT staff would be used if DPI unified with ITD, what the response time would be for submitting IT work requests to ITD, cost and efficiency outcomes, and how services to North Dakota's 120,000 K-12 students would be affected.

The COVID-19 pandemic halted the review process to evaluate whether to unify department IT staff with ITD. Due to the uncertainty of IT unification and not being able to complete the review process, DPI does not support unification with ITD at this time.

#### **State Water Commission**

The State Water Commission does not support unifying its IT staff positions with ITD. The agency has 2 FTE programmer analyst positions.

The State Water Commission's IT infrastructure includes data initiatives to support water resource management and engineering and scientific analysis requirements. The agency does not utilize commercial software for water resource management. Experience with agency practices and water resource management requirements are necessary to meet the agency's IT needs.

If SWC unified its IT staff with ITD, the SWC indicated either ITD would have to expand its services to meet the needs of the agency or SWC would have to retool the agency's infrastructure to move data to ITD systems. The agency reported neither option is considered cost-effective or desirable for the SWC.

The State Water Commission estimated the biennial cost of unifying its IT staff with ITD at \$6.8 million compared to the current biennial agency IT budget of \$909,000. The \$6.8 million estimate does not include any estimates of rewriting agency software code. The biennial maintenance costs after unifying with ITD are approximately \$3.2 million more than if the agency does not unify IT staff with ITD.

### **Recommendation**

The committee recommends the 2021 Legislative Assembly continue the 2019-21 biennium IT unification pilot project and continue evaluating the advantages and disadvantages of potential future IT unification initiatives.

# **STUDY OF BLOCKCHAIN IN STATE GOVERNMENT**

## **Background Information**

The Legislative Management assigned the committee the responsibility of studying the potential benefit value of blockchain technology implementation and utilization in state government administration and affairs, including a comprehensive assessment of government areas in which blockchain technology can assist with agency affairs and administration, accounting and budgeting, transactions, creating necessary audit trails, authorizing a decision, authenticating authority, and establishing a system of record; and an analytical evaluation of implementing smart contracts to improve efficiencies in contract enforcement, the cost-effectiveness and increased security of utilizing a blockchain technology electronic voting system, and the exploration of other eGovernment services and applications, such as identity management, tax collection, land registry, distribution of benefits, and digital exchanges. (House Concurrent Resolution No. 3004 (2019))

In 2008 a new technology known as blockchain was created as an open, decentralized ledger that records transactions between two parties permanently without needing third-party authentication. Blockchain is a list of transactions called "blocks" that are shared between multiple parties in which new transactions are added at the end of the blockchain. The existing data is never changed or deleted when new data is added. If a portion of data is changed, the entire blockchain will change, resulting in the user being able to detect the change in data. When a transaction is initiated, it is bundled into a block, which is then verified for legitimacy by the majority of the participants in the system and added to the blockchain. The blockchain contains a verifiable record of every transaction made in the system. Blockchain is intended to be a decentralized technology so the data can be hosted at multiple locations. If data is destroyed at one location, the data remains available at other locations.

Blockchain is a form of distributed ledger technology, which is a database containing replicated, shared, and synchronized digital data available to users at multiple sites, countries, or institutions without the use of a central administrator or centralized data storage.

## **Information Technology Department**

The committee received information from ITD regarding the committee's study of blockchain in state government, including an explanation of blockchain and distributed ledger technology and the potential use in state government, examples of the use of blockchain and distributed ledger technology in other state governments, and examples of the use of blockchain and distributed ledger technology in the private sector.

Other states and countries have used blockchain for various purposes, including document archiving, voting and election systems, land registry, digital evidence, vital records, and health care data exchanges. Other uses of blockchain for North Dakota government include eTranscripts, driver's license services, WSI claims, land registry and county parcel services, and citizen identity needs. The private sector has started using blockchain for financial transactions, ownership of assets, supply chain processes, payments, health care, and customer engagement.

The Information Technology Department does not anticipate any new legislation is needed for ITD to pursue blockchain-related technologies and projects for state agencies because ITD is using blockchain in existing agency projects, including an insurance policy reporting project with the Insurance Department and a mobile application to verify citizen data.

## **Insurance Commissioner**

The committee received information from the Insurance Commissioner regarding the Insurance Department's use of blockchain technology. The Insurance Department is using an open source blockchain with private sector vendors to obtain real-time data on insurance policies rather than receiving annual reports that contain data that is more than 1 year old. Because the blockchain is open source, ITD can access it and structure it to meet the needs of the Insurance Department. The ledger capabilities of blockchain technology can help the Insurance Department reduce the number of paper checks the department receives and deposits. Once fully implemented, North Dakota would be the first state to use blockchain for insurance information purposes.

## **University System**

The committee received information from the University System regarding blockchain and distributed ledger technology initiatives and possibilities. Potential areas for University System blockchain implementation include student records and credentialing, digital rights protection and copyrights, and digital identity. Challenges of implementing blockchain technology include experiencing significant process changes, creating government regulations, and the creation and modification of technology standards. The University System has not analyzed potential government barriers to implementing blockchain technology for higher education campuses. The University System anticipates evaluating blockchain use in higher education during calendar year 2021.



## **Securities Department**

The committee received information from the Securities Department regarding the potential for blockchain-related securities fraud and other regulatory concerns related to distributed ledger technology. Blockchain technology can be used to create and sell a digital asset through a transaction called an initial coin offering or security token offering, which is a new way for businesses to raise capital from investors. This type of transaction also is a new way for criminals to steal money from investors.

Distributed ledger technology and blockchain can be used in an initial coin offering or security token offering to create virtual coins or tokens, which can be purchased by investors with traditional currency like dollars or digital currency like Bitcoin. After virtual coins or tokens are issued, they may be resold on virtual currency exchanges or other secondary markets.

The primary violations associated with raising virtual currency using blockchain have been:

- Failure of a legitimate business to comply with federal or state security laws to register the currency offering or qualify for an exemption from registration; and
- Criminals committing fraud on the Internet by exploiting innovation, social media, and investor fears.

The committee was informed while the Century Code provisions appear adequate, five states have enacted legislation to exclude digital instruments not designed as investment contracts from security law regulations. No federal security laws have been approved which apply to initial coin offerings or security token offerings, but the federal Securities and Exchange Commission has issued guidance for businesses.

## **Department of Financial Institutions**

The committee received information from DFI regarding regulations of virtual currencies and distributed ledger technologies. The benefits of virtual currency or blockchain regulation include requiring licenses and registration, net worth minimum and financial soundness, bond requirements, requiring permissible investments to cover outstanding liabilities, and implementing reporting requirements; all of which increase consumer confidence. The Century Code does not prohibit banks or credit unions from utilizing blockchain technologies. The Department of Financial Institutions provides guidance to financial institutions regarding blockchain cybersecurity. The Uniform Law Commission is working on the Uniform Money Services Act, which will provide guidance for money transmissions, including blockchain, and will provide consumer protection regulation, preserve public confidence, and prevent unlawful individuals from entering the money services industry.

The Uniform Money Services Act has not been released, but if available by 2021, DFI may request the 2021 Legislative Assembly to adopt the Uniform Money Services Act.

## **Recommendation**

The committee makes no recommendation related to the study of blockchain in state government.

## **CYBERSECURITY**

The Legislative Assembly approved Senate Bill No. 2110 (2019) to require ITD to advise and oversee cybersecurity strategy for all executive branch agencies, including institutions under the control of the State Board of Higher Education, counties, cities, school districts, and other political subdivisions. The Legislative Assembly approved 8 new cybersecurity FTE positions for ITD for the 2019-21 biennium. The Information Technology Department reported it is focusing on strategic, operational, and workforce components of cybersecurity. North Dakota is targeted by cyber attacks due in part to the state's energy, unmanned aircraft systems, agriculture research, military, and election system resources.

Information Technology Department's goals for cybersecurity for the 2021 legislative session are for the approval of IT unification, authority to hire 29 new FTE cybersecurity professionals, and the passage of proposed legislation requiring cybersecurity incidents to be reported to ITD.

## **Cybersecurity Insurance**

The committee received information from ITD and the Risk Management Division of OMB regarding cybersecurity insurance. The state has a cybersecurity insurance policy that insures all state government agencies, except the Bank of North Dakota, which has its own cybersecurity insurance policy, in the event of a cybersecurity or ransomware attack. The policy does not cover counties, cities, school districts, or other political subdivisions. The Risk Management Division combined other state agency cybersecurity insurance policies into the combined state policy in February 2018.

The state cybersecurity insurance policy includes a \$250,000 deductible and provides coverage of up to \$5 million of damages in the event of a successful cybersecurity attack. Damages the policy covers include operational costs to

reconnect systems and services, notifying impacted individuals or agencies of the attack, and the cost of affected individuals or agencies enrolling in credit monitoring services. The policy does not pay for the loss of data or value.

The state cybersecurity insurance policy provides an additional \$5 million of coverage if the state is held liable if other entities that rely on the statewide technology access for government and education network (STAGEnet) experience a successful cybersecurity attack. The policy cost for fiscal year 2021 is approximately \$146,000, which is paid from the risk management fund.

Political subdivisions are insured through the North Dakota Insurance Reserve Fund, which includes no deductible and covers costs associated with an information breach but does not cover damages from cybersecurity events.

### **Network Cybersecurity Requirements**

The committee received information from ITD regarding cybersecurity and minimum security requirements for state and political subdivisions using STAGEnet. The Information Technology Department is establishing standards for government and educational entities to access STAGEnet, including default blocking of macros, removing unnecessary administrative rights on user devices, using multifactor authentication, ensuring proper data backups, using artificial intelligence to reduce ransomware risk, and requiring entities to report security events to ITD. The Information Technology Department is forming a cybersecurity steering committee for state agencies and political subdivisions, which will include participation from the University System, City of Fargo, and representatives of other cities, counties, school districts, the legislative and judicial branches, and tribal entities.

The committee was informed ITD has strategic cybersecurity authority for political subdivisions but no authority to enforce compliance with ITD's cybersecurity requirements. The department provides guidance and documentation to political subdivisions regarding cybersecurity minimum standards and best practices for access to STAGEnet, but because ITD does not have the authority to enforce the standards and practices or monitor compliance with ITD guidance, political subdivisions may choose whether the requirements are implemented at the local level.

### **Proposed Cybersecurity Legislation**

The committee received information from ITD regarding legislation ITD may request during the 2021 legislative session, including changes necessary for STAGEnet standards. The department may introduce legislation to request state and local government agencies be required to report major cybersecurity incidents to ITD.

The proposed legislation would require executive branch state agencies and political subdivisions to disclose to ITD all cybersecurity incidents that affect the confidentiality, integrity, availability, or ownership of computer systems or data upon discovery. The Century Code allows but does not require state agencies and political subdivisions to disclose cybersecurity incident information to ITD. The proposed legislation would allow the legislative and judicial branches to disclose cybersecurity incidents to ITD. The Information Technology Department would be required to provide consultation services and other resources to assist state agencies and political subdivisions in responding to and remediating cybersecurity incidents. The Information Technology Department would be required to report to the Legislative Management all disclosed cybersecurity incidents, including the status of the cybersecurity incident and any response or remediation to mitigate the cybersecurity incident.

### **Recommendation**

The committee recommends the 2021 Legislative Assembly favorably consider legislation that may be introduced requiring executive branch agencies and political subdivisions to report cybersecurity incidents to ITD.

### **COVID-19 PANDEMIC FEDERAL RELIEF FUNDING**

In May 2020, the Emergency Commission and Budget Section approved an ITD request to receive and spend federal funding of \$67,618,226 from the state's allocation from the federal Coronavirus Relief Fund, of which \$17 million is for cybersecurity, \$23,868,226 is for telework, and \$26,750,000 is for digital government. The committee received information regarding ITD's actual and planned use of the funding, including how ITD initiatives will affect state agency budgets and the estimated ongoing costs for the 2021-23 biennium. The committee was informed the amounts spent on cybersecurity, telework, and digital government initiatives may vary based on actual usage and need.

The schedule below summarizes ITD's cybersecurity, telework, and digital government projects and use of the funding approved from the Coronavirus Relief Fund resulting from the COVID-19 pandemic. The amount committed for the 2019-21 biennium is through September 30, 2020.

Project	Description	Expenditure Type	2019-21 Biennium Funding Available	2019-21 Biennium Funding Committed	Estimated 2021-23 Biennium Ongoing Costs
<b>Cybersecurity</b>					
Albert sensors	Purchase of network sensors to detect bad contact image sensors	Hardware	\$400,000	\$675,780	\$40,000
Jump box response and forensic tools	Increased ability to perform forensic activity and analysis	Hardware/ Software	100,000	20,320	10,000
Threat intelligence management platform	Licenses for security orchestration, automation, and response software	Software	1,467,529	1,467,529	2,800,000
Cybersecurity customer dashboard	Purchase of software to detect device vulnerabilities and development of a dashboard to track vulnerabilities	Software	250,000	0	100,000
Security laboratory and staging environment	Purchase of software for incident response	Software	100,000	0	20,000
PhishER - Artificial intelligence phishing	Phishing indicator enhancement	Software	165,000	117,018	80,000
Third-party risk management	Assess the state's security posture	Service	2,000,000	0	1,000,000
Security assessment and continuous monitoring	Identify system boundaries and providing ongoing risk assessment	Service	2,000,000	902,855	1,000,000
Vulnerability management program	Provide training to cybersecurity infrastructure team and consultant hours to create dashboards	Service	200,000	0	100,000
Fraud detection	Fraud detection for JSND	Staff support	100,000	100,000	0
Cortex XDR managed threat hunting infrastructure	End point vulnerability analysis	Staff support	557,471	412,890	0
System on a chip development	Consulting for workshops, assessments, tabletops, mentoring, and project management	Staff support	1,000,000	1,002,167	0
Resident engineering restructuring	Realignment for organizational units, including K-12 and intrastate cyber support	Staff support	6,160,000	6,160,000	0
Outreach	Public outreach for cybersecurity issues	Staff support	500,000	0	50,000
Staff augmentation	Funding to reduce incident backlog	Staff support	1,000,000	1,000,000	0
SANS Institute education	Funding for 100 courses and 50 cybersecurity global information assurance certifications from the SANS Institute	Training	500,000	290,000	200,000
Udemy, Inc.	Udemy, Inc. access for ongoing training	Training	500,000	471,107	200,000
Cybersecurity subtotal			\$17,000,000	\$12,619,666	\$5,600,000
<b>Telework</b>					
Desktop replacements	Desktop replacements	Hardware	\$6,000,000	\$5,053,969	\$1,249,500
Server and switch infrastructure upgrade	Upgrade server and switch infrastructure	Hardware	1,285,972	737,792	0
Conference room upgrades	Conference room upgrades	Hardware/ Software	3,232,500	1,524,337	650,000
Microsoft Office 365 E5 productivity suite upgrade	Upgrade current E3 licenses	Software	1,650,000	1,650,000	3,300,000
Enterprise asset and configuration management	Additional enterprise service management deployment	Software	600,000	646,178	0
Enterprise service management service catalog	Additional enterprise service management deployment	Software	600,000	359,859	0
AlgoSec	Network security policy management software	Software	41,400	41,400	0
Telework licensing and implementation	Microsoft Azure premium and PowerBI expansions and remote support toolset purchases	Software	2,455,200	781,319	1,015,200
Windows deployment enablement	System deployments in virtual environments	Software	821,000	821,000	0

<b>Project</b>	<b>Description</b>	<b>Expenditure Type</b>	<b>2019-21 Biennium Funding Available</b>	<b>2019-21 Biennium Funding Committed</b>	<b>Estimated 2021-23 Biennium Ongoing Costs</b>
Azure business to business active directory	Authentication system	Software	113,000	113,000	0
Business support professional services	Business partner support	Service	1,981,400	1,545,587	0
Continuity of government strategic assessment	Determine secondary and tertiary impacts to state government and create responses to minimize risks of the COVID-19 pandemic	Service	2,416,500	2,871,000	0
Continuity of government project management and oversight	Project management consulting and oversight for continuity of government and the COVID-19 pandemic	Staff support	205,660	205,660	0
Strategic health task force project management	Project management support for health task force deployments	Staff support	206,625	206,625	0
Telework toolset training	Telework toolset training	Training	747,000	0	0
Organizational change management	Organization change management training	Training	2,200,000	1,059,000	0
Telework subtotal			\$24,556,257	\$17,616,726	\$6,214,700
<b>Digital government</b>					
Call center solution	Establish an enterprise call center with Microsoft Teams Voice to replace individual agency specific call centers	Hardware/ Software	\$5,250,000	\$0	\$250,000
Modern data culture data lake	Development of a COVID-19 unified data platform	Hardware/ Software	6,000,000	981,816	2,000,000
Grant application	Department of Commerce grant application process and receipt management for small and medium business	Software	218,560	227,560	0
Staff augmentation for business process improvement and automation opportunities	Business analyst resources to identify challenges with manual workflows and to assist with automation	Software/ Staff support	12,000,000	846,812	0
Modern data culture data environment assessment	Assess current data environment and develop an approach to data governance for a data science ecosystem, including for DOH contact tracing	Staff support	240,000	625,000	0
Digital services	Unifying design of websites to allow users to better find services	Staff support	2,353,409	0	0
Digital government subtotal			\$26,061,969	\$2,681,188	\$2,250,000
<b>Total</b>			<b>\$67,618,226</b>	<b>\$32,917,580</b>	<b>\$14,064,700</b>

## VENDOR LIABILITY

The committee received information from the Risk Management Division of OMB regarding proposed legislation related to vendor liability. Section 32-12.2-15 authorizes state agencies to contractually limit the liability of a vendor for indirect loss resulting from the purchase or lease of certain products and services. State agencies must consult with the Attorney General and OMB regarding any contractual provisions and potential risk of loss to the state.

The proposed legislation would require if the potential direct loss is unknown, direct liability to the state must be set to twice the value of the contract unless all parties to the contract agree to an alternative amount. Exceptions to this requirement include breach of data confidentiality obligations and personal injury or property damage. Any agreed upon amount less than twice the value of the contract must be approved by the director of OMB.

The committee was informed if direct liability is not limited, the number of vendors that submit bids for state IT requests for proposals may decline.

### **Recommendation**

The committee recommends the 2021 Legislative Assembly favorably consider legislation that may be introduced related to limiting vendor liability in state contracts.

## **EMERGENCY SERVICES COMMUNICATIONS COORDINATING COMMITTEE**

The Legislative Management assigned the committee the responsibility to receive a report from the Emergency Services Communications Coordinating Committee (ESC3) regarding changes to the operating standards for emergency services communications pursuant to Section 57-40.6-12. The Emergency Services Communications Coordinating Committee was established in 2001 and is composed of two state and two local government representatives. The primary responsibility of ESC3 is to implement technologies that will efficiently and cost-effectively deliver 911 calls to 1 of the 21 North Dakota public safety answering points (PSAP). The primary funding source to provide 911-related services is through an emergency services communications system fee levied on telecommunication services in the state. All 53 counties and 1 city impose this fee. The Emergency Services Communications Coordinating Committee reported as of September 2020, 35 county and city jurisdictions charge the maximum \$2.00 fee on assessed communication services while 19 jurisdictions charge a \$1.50 fee. The telecommunication tax revenue totaled \$17.7 million in 2019, which is 64 percent of the \$27.5 million needed annually to support emergency communications in the state. The remaining amount needed for emergency services is collected primarily from property taxes.

The Emergency Services Communications Coordinating Committee presented proposed legislation providing technical corrections and updated terminology to Chapter 57-40.6 regarding emergency services communication systems.

### **Recommendation**

The committee recommends the 2021 Legislative Assembly favorably consider legislation that may be introduced updating terminology relating to emergency services communications.

## **MAINFRAME MIGRATION**

In October 2019, the committee toured the ITD data center in the Capitol. The committee observed state agency servers and the IBM mainframe while learning the history and usage of the data center, including the effect of cloud computing on data centers and computing power.

The committee received information from ITD regarding state mainframes, including training needs and costs to maintain the mainframes and efforts to transition state agency applications and systems off mainframes to newer technology. The state has four mainframes, including an AS/400 model, an AIX model that hosts the DHS Medicaid management information system, the JSND Unisys mainframe, and the primary IBM mainframe that hosts several large applications, the largest of which are for DHS and DOT.

The committee was informed ITD employs 3 FTE core system administrator positions and contracts with a vendor to maintain mainframe technology. An additional 18.5 FTE positions assist with mainframe work when needed. The cost to maintain state mainframe technology is approximately \$7.8 million each biennium, of which \$1.6 million is for salaries and wages and \$6.2 million is for operating expenses.

The first attempt to transition state applications and systems off mainframe technology was during the 2005-07 biennium. The Information Technology Department plans to transition all state agency applications off the primary IBM mainframe by the end of the 2025-27 biennium. The total estimated cost of transitioning all applications off the IBM mainframe is \$100.7 million, of which \$82.7 million is from the general fund and \$18 million is from federal funds.

Of the \$100.7 million estimated total, \$53 million may be requested for the 2021-23 biennium, including \$35 million from the general fund and \$18 million from federal funds. The estimated 2023-25 biennium and 2025-27 biennium general fund totals are \$36.6 million, and \$22.2 million, respectively. Of the \$100.7 million estimated total, \$88.4 million relates to DHS applications, \$8.3 million relates to DOT applications, and \$4 million relates to other state agency applications. The Department of Transportation driver's license program will be removed from mainframe technology during the 2019-21 biennium.

### **Recommendation**

The committee encourages ITD to transition all state agency applications off the primary IBM mainframe by the end of the 2025-27 biennium.

## **INFORMATION TECHNOLOGY DEPARTMENT STRATEGIC PLAN AND ANNUAL REPORT Strategic Plan**

Section 54-59-06 requires ITD to develop and maintain a business plan and Section 54-35-15.2 requires the committee to review the plan. Pursuant to that directive, ITD prepared a strategic business plan for the 2021-23 biennium. The 2021-23 biennium strategic and business plan includes goals of automating 20 percent of all state government work; decreasing FTE position requirements by 20 percent and reallocating salaries and training for staff; building new architecture to secure data and allow for comprehensive transformation of state IT; reinventing people, processes, and experiences; exploring alternate funding and operating models so ITD does not need funding from state agencies or the general fund; and unifying all IT services to the extent possible in state and local government. At the time of this report, the strategic plan is being finalized with the statewide IT plan, which is scheduled to be completed in November 2020.

### **Annual Report**

Section 54-59-19 requires ITD to prepare an annual report on IT projects, services, plans, and benefits and to provide the report to the committee. Pursuant to the directive, ITD prepared and presented a report for fiscal year 2019, which included an executive summary, accomplishments, financial metrics and financial statements, and performance measures. The report indicated ITD accomplishments during fiscal year 2019 included the IT unification of six state agencies; increases in cybersecurity policy, personnel, and tools; increased usage of the North Dakota Health Information Network (NDHIN); the K-20W Initiative, which is a workforce cybersecurity education initiative; and internal service delivery, automation, and cross-agency collaboration.

The fiscal year 2020 report was not yet available when the committee completed its interim responsibilities.

## **INFORMATION TECHNOLOGY STANDARDS AND STATEWIDE PLAN Information Technology Policies, Standards, and Guidelines**

Section 54-59-09 requires ITD to develop statewide IT policies, standards, and guidelines based upon information received from state agencies and institutions. Except institutions under the control of the State Board of Higher Education, each executive branch agency and institution is required to comply with the policies and standards developed by ITD. Information technology policies, standards, and guidelines must be reviewed by SITAC. The department has adopted policies, standards, and guidelines in several areas and continues to update and adopt new policies, standards, and guidelines as necessary.

### **Statewide Information Technology Plan**

Section 54-59-11 requires every executive branch agency, except institutions under the control of the State Board of Higher Education, to prepare an IT plan unless the CIO grants an exemption. Section 54-35-15.2 requires the committee to review the plan. The plan must be prepared based on guidelines developed by ITD and must be submitted to ITD by August 15 of each even-numbered year unless the CIO grants an extension. The Information Technology Department is required to review each entity's plan for compliance with statewide IT policies and standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches are required to file IT plans with ITD by August 15 of each even-numbered year. Based on the IT plans, ITD must prepare a statewide IT plan. The statewide IT plan must be developed with emphasis on long-term strategic goals, objectives, and accomplishments.

Due to the COVID-19 pandemic, several agencies were given extensions for submitting agency IT plans to ITD. The department anticipates finalizing the statewide IT plan for the 2021-23 biennium in November 2020.

## **LARGE INFORMATION TECHNOLOGY PROJECTS**

The committee is authorized to review any IT project or IT plan. If the committee determines a project or plan is at risk of failing to achieve its intended results, the committee may recommend OMB suspend the expenditure of money appropriated for the project or plan. In addition, the committee may review a project startup and project closeout report for any large IT project. A large IT project is defined in Section 54-35-15.2 to be an executive, judicial, or legislative branch project with a cost of \$500,000 or more or a higher education project that impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.

### **Review of Large Information Technology Projects**

For major IT projects in progress during the 2019-20 interim, the committee received and reviewed quarterly status reports compiled by ITD, project startup and project closeout reports, and other information regarding specific IT projects. The committee was informed no large projects were canceled as a result of the COVID-19 pandemic, but 12 of the 29 large projects active from March 2020 through September 2020 were given new budget or schedule baselines. Below is a summary of the project startup and project closeout reports and the iterative project reports received by the committee.

<b>Project Startup Reports</b>				
<b>Agency</b>	<b>Project Name</b>	<b>Project Description</b>	<b>Estimated</b>	
			<b>Cost</b>	<b>Completion Date</b>
Secretary of State	Elections program	Replacement of statewide voting system and implementation of statewide electronic pollbooks	\$8,628,516	January 2021
DTL	Unclaimed property project	Replacement of DTL unclaimed property system	\$273,700	May 2019
DOH	Electronic Women, Infants, and Children project	Implementation of an electronic system to replace paper processes	\$2,407,435	October 2020
Department of Environmental Quality	Environmental regulatory software system	Implementation of reporting and notification software for Quad O and Quad Oa federal air pollution programs	\$704,500	January 2021
DHS	Budget planning and forecasting system	Implementation of Oracle planning and budgeting cloud service and Oracle enterprise performance reporting cloud service for annual budget planning and forecasting	\$847,931	June 2020
DHS	Electronic visit verification system	Automation of manual and paper processes for personal care and home services	\$1,416,748	August 2021
Industrial Commission	Oil and gas regional database management systems program - Release 1	Implementation of the bond management, entity management, and general module portions of the upgrade of the oil and gas risk-based data management system from a legacy platform to a web-enabled platform	\$1,285,115	May 2019
Industrial Commission	Oil and gas regional database management systems program - Release 2	Implementation of the transfer and well management module portions of the upgrade of the oil and gas risk-based data management system from a legacy platform to a web-enabled platform	\$2,433,555	January 2020
DOT	Driver's license project	Upgrade of driver's license and motor vehicle systems from mainframe technology to modern technology	\$22,500,000	March 2020
ITD	Palo Alto toolset implementation	Technology and core cybersecurity initiative to allow ITD to secure, defend, and respond to cyber attacks	\$11,314,834	June 2020
ITD	Statewide interoperable radio network (SIRN) project - Phase 1, Group 1	Establish the network core and five PSAP equipment replacements to provide interoperable radio communication for public safety personnel	\$5,741,102	June 2020
DPI	ND Foods 4.0	Improve decisionmaking capabilities, staff efficiencies, and reporting processes, and align the system with federal regulations	\$562,394	September 2019
JSND	Unemployment insurance modernization project - Claimant portal - Phase 1	Replacement of unemployment insurance system and transition from Unisys mainframe technology	\$1,150,330	December 2019

<b>Project Closeout Reports</b>				
<b>Agency</b>	<b>Project Name</b>	<b>Project Description</b>	<b>Actual</b>	
			<b>Cost</b>	<b>Completion Date</b>
DTL	Unclaimed property project	Replacement of DTL unclaimed property system	\$205,987 (Budget of \$273,700)	4 months - Same as scheduled
DOH	Medical marijuana system	Implementation of a medical marijuana program for production, processing, sale, and dispensable medical marijuana	\$213,463 (Budget of \$231,050)	4 months - Same as scheduled
DHS	New Medicaid card	Update to the health enterprise Medicaid management information system to comply with Centers for Medicare and Medicaid Services (CMS)	\$1,950,380 (Budget of \$2,513,200)	8 months - 2 months ahead of schedule

Project Closeout Reports				
Agency	Project Name	Project Description	Actual	
			Cost	Completion Date
DHS	Budget planning and forecasting system	Updates of budget planning and forecasting system to reduce data entry needs of staff	\$820,961	11 months - 2 months behind schedule
Secretary of State	File 2.0 project	Implementation of software to replace mainframe central indexing system and business services system for business registration and information, licensing, notary, and administration	\$6,518,874 (Budget of \$7,895,739)	88 months - Same as scheduled
DPI	ND Foods 4.0	Improve decisionmaking capabilities, staff efficiencies, and reporting processes, and align the system with federal regulations	\$194,321 (Budget of \$562,394)	10 months - Same as scheduled

**Iterative Project Reports**

**WSI - Claims and policy system (CAPS) replacement project**  
 Replacement of core business applications related to claims and policies to improve customer service. The total estimated project cost is \$29.6 million.

Release	Actual Costs	Budgeted Costs	Completion Dates
• Releases 0-1 - Forms and database consolidation	\$1,292,069	\$1,630,288	April 2016
• Release 2 - Work management core functionality	\$1,332,631	\$1,640,320	September 2016
• Release 3 - Work management part 2	\$1,115,716	\$1,355,629	February 2017
• Release 4 - Policy registration	\$1,660,615	\$1,873,410	November 2017
• Release 5 - Policy maintenance part 1	\$1,638,705	\$1,835,649	July 2018
• Release 6 - Policy maintenance part 2	\$2,568,372	\$2,698,860	July 2019
• Release 7 - Policy maintenance part 3	\$2,389,227	\$2,502,194	August 2020
• Release 8 - Payroll reporting	Unknown	\$2,658,946	June 2021 (Estimated)
• Releases 9-20 - Claims	Unknown	Unknown	2025-27 Biennium (Estimated)

**WSI - myWSI enhancement**  
 Creation of a secure extranet portal for injured workers, employers, and medical providers.

Release	Actual Costs	Budgeted Costs	Completion Dates
• Releases 1-2 - Enabling employers to review information and reports	\$983,891	\$1,032,409	September 2019
• Release 3 - Electronic forms and workflows	\$540,249	\$599,312	July 2020
• Release 4 - Online payroll reporting and external forms	Unknown	\$303,350	June 2021 (Estimated)

**DHS - Self-service portal and combined eligibility system**  
 Replacement of eligibility systems with a single system to comply with requirements of the Patient Protection and Affordable Care Act.

Release	Actual Costs	Budgeted Costs	Completion Dates
• Release 1 - Convert systems that determine eligibility under the federal Affordable Care Act	\$49,842,739	\$50,943,770	February 2016
• Release 2 - Planning for conversion of other system components	\$102,743,168	\$108,469,338	March 2019
• Release 3 - Eligibility coverages for aged, blind, and disabled individuals	Unknown	\$9,401,330	August 2020
• Release 4 - Implementation of the low-income home energy assistance program	Unknown	Unknown	August 2021 (Estimated)

**ITD - NDHIN**  
 Creation of a secure exchange of health information that enables clinical users, such as providers, nurses, and clerical staff to easily and efficiently view information relating to a patient's electronic medical record. The total estimated project cost is \$12.5 million.

Phase	Actual Costs	Budgeted Costs	Completion Dates
• Phase 1 - Upgrade of NDHIN platforms	\$5,706,806	\$5,937,118	June 2019
• Phase 2 - Additional functionality for NDHIN utilization reports, notification alerts, analytics and coordinate modules, and training	Unknown	\$3,051,000	Unknown
• Phase 3 - Multiple assessments, including on sustainability, notifications, and alerts	Unknown	\$602,500	March 2021 (Estimated)
• Phase 4 - Participant database	Unknown	\$79,000	Unknown
• Phase 5 - Infrastructure assessment	Unknown	\$186,000	Unknown
• Phases 6-8 - Technology assessment and expand capabilities	Unknown	Unknown	Unknown



### **Department of Human Services - Medicaid Management Information System**

The committee received information from DHS regarding the Medicaid management information system project. The primary function of the system is the payment of Medicaid claims from health care providers for individuals enrolled in the Medicaid program. The project started in June 2006 and was substantially completed in October 2015. In February 2019, CMS performed a certification review of the system. In June 2019, DHS received notification from CMS that the system was certified, and CMS approved a 75 percent federal financial participation for costs associated with the operation of the system retroactive to the system's implementation on October 5, 2015. This resulted in DHS receiving \$17.5 million of federal funding from CMS for costs the department has incurred since October 5, 2015, related to the system. During fiscal year 2019, 4,072,184 Medicaid claims were processed through the system, averaging 339,349 claims per month.

### **Department of Transportation - Driver's License Project**

The committee received information from DOT regarding the driver's license project. The business process modeling portion of the project was completed in March 2020, at a cost of \$216,350, which will reduce waiting and processing times and increase availability of services. The motor vehicle and driver's license system implementation project budget was increased from \$22.5 million to \$28.7 million, an increase of \$6.2 million of federal funding related to COVID-19 technology costs. The project will include the purchase and distribution of 52 self-service kiosks throughout the state and the creation of a motor vehicle and driver's license mobile application.

### **Information Technology Department - Statewide Interoperable Radio Network**

The committee received information from ITD regarding the SIRN project, which consists of three phases. Phase 1 relates to the SIRN core and PSAPs and includes two groups. Phase 2 relates to the SIRN network and towers and includes two groups--one for state towers and one for leased towers. Phase 3 relates to SIRN devices and radios.

The Information Technology Department indicated the COVID-19 pandemic delayed the SIRN project due to travel restrictions, equipment supply delays, and postponement of legal review. Phase 1, group 1 is expected to be completed in October 2020. Phase 1, group 2 is estimated to be completed in the 1<sup>st</sup> quarter of 2021. Phase 2, group 1 related to state towers is estimated to be completed in the 3<sup>rd</sup> quarter of 2023. Phase 2, group 2 related to leased towers is estimated to be completed in the 2<sup>nd</sup> quarter of 2021. The estimated completion date for the entire project is during the 2<sup>nd</sup> quarter of 2024.

Through September 2020, \$76.9 million has been obligated for the SIRN project, of which \$71.4 million is from state funds and \$5.5 million is from local funds. Seven political subdivisions have been reimbursed \$320,000 from the state for the purchase of personal and vehicular radios through September 2020. The Information Technology Department may introduce legislation to clarify which political subdivisions may receive radio reimbursement from the state.

The committee was informed many counties and cities planned to use funding from state oil and gas tax revenue allocations to pay for the local cost of SIRN radios. Due to the decrease in oil and gas tax revenue collections during the 2019-21 biennium, those sources of revenue likely will not be available. Motorola is offering counties and cities a 3- to 4-year, 0 percent interest loan to pay for the local cost of SIRN radios.

### **Department of Trust Lands Information Technology Project**

The committee received information from DTL regarding the department's IT project pursuant to Section 10 of House Bill No. 1013 (2019). The 2017 Legislative Assembly appropriated \$3.6 million for an IT system replacement project. The current IT system includes data management systems no longer supported by vendors. The IT project includes the replacement of all department software and IT equipment, which is being done in coordination with ITD and OMB.

The major components of the IT project include unclaimed property, financial management and accounting, and land management. The unclaimed property system go-live date was April 29, 2019. In July 2020, the committee was informed the financial management and accounting system replacements would be completed by the end of July 2020. The land management system is estimated to be complete in 2022.

The cost of the unclaimed property system replacement was \$66,956. The cost of the financial management and accounting system replacement was \$1,816,657 through June 2020. The estimated cost of the land management system replacement is \$2,558,085, excluding unknown costs from ITD. The department estimates an additional \$1.6 million is needed to complete the land management system replacement.

### **Large Information Technology Project Ongoing 2021-23 Biennium Funding**

The committee received information from ITD regarding large IT project funding projected to not be spent during the 2019-21 biennium and continued into the 2021-23 biennium, including the amount approved, amount to be continued, and funding source for each project. The Information Technology Department anticipates eight projects will need 2019-21 biennium funding continued into the 2021-23 biennium. The total budget for the eight projects is \$195 million

during the 2019-21 biennium, of which \$11.7 million is from the general fund, \$55.7 million is from federal funds, and \$127.6 million is from special funds. The estimated funding needed to be continued into the 2021-23 biennium for these projects is \$105.6 million, of which \$9.9 million is from the general fund, \$3.6 million is from federal funds, and \$92.1 million is from special funds. The projects are for ITD, DHS, DPI, and the Retirement and Investment Office.

**PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS**

Section 54-59-02.1 requires ITD to submit information regarding proposed major IT projects over \$500,000 for executive branch state agencies, excluding institutions under the control of the State Board of Higher Education and agencies of the judicial and legislative branches, to SITAC. The State Information Technology Advisory Committee is required to review and rank the projects. The CIO is required to submit SITAC recommendations to the Information Technology Committee, OMB, and the Appropriations Committees of the Legislative Assembly. The judicial and legislative branches must notify the committee each biennium on major IT projects and priorities. Section 54-35-15.2(13) requires the CIO to provide a report to the Information Technology Committee regarding the prioritization of major IT project recommendations.

Due to the COVID-19 pandemic, many agencies continue working on 2021-23 biennium budget requests and have not submitted requests to ITD for prioritization of major IT projects at the time of this report. The State Information Technology Advisory Committee intends to meet in November 2020 to prioritize major computer software projects and to publish the prioritized list in December 2020. During the final meeting of the interim on September 30, 2020, the Information Technology Committee received information regarding ITD, DOT, and WSI major IT projects expected to be requested for the 2021-23 biennium. The list of nonprioritized IT projects received as of September 30, 2020, includes:

Agency	Project Name	General Fund Request	Other Funds Request	Total Request
ITD	Cybersecurity forensic laboratory	\$750,000		\$750,000
ITD	Cybersecurity process automation	500,000		500,000
ITD	Technical debt reduction	60,000,000		60,000,000
ITD	Business process improvement/Organizational change management/Automation	40,000,000		40,000,000
WSI	CAPS Release 9 - Policy stabilization		\$912,285	912,285
WSI	CAPS Release 10 - Claim registration		1,906,630	1,906,630
WSI	CAPS Release 11 - Claim parties and claim maintenance - Part 1		1,905,090	1,905,090
WSI	CAPS Release 12 - Claim parties and claim maintenance - Part 2		2,045,010	2,045,010
WSI	CAPS Release 13 - Wages and reserves		1,510,465	1,510,465
WSI	myWSI Release 5 - Site reorganization/Employer dashboard/Enterprise identify management integration		923,450	923,450
WSI	myWSI Release 6 - Employer online application/Provider dashboard/Forms foundation		923,450	923,450
WSI	myWSI Release 7 - Provider forms submission/Medical records/Safety and ergo refactor		858,331	858,331
WSI	myWSI Release 8 - Injured employee dashboard/Claim file access/Forms submission		655,213	655,213
DOT	Automate vehicle location hardware and software expansion	1,745,000	1,745,000	3,490,000
DOT	Construction and materials management system	3,800,000		3,800,000
DOT	Agency website Drupal uplift and enhancements		500,000	500,000
DOT	Roadway inventory management system replacement	5,860,000		5,860,000
DOT	Traffic counting program modernization		3,000,000	3,000,000
DOT	Traffic data estimating and analysis replacement		500,000	500,000
Total		\$112,655,000	\$17,384,924	\$130,039,924

**EDUCATION  
University System**

The committee received information from the State Board of Higher Education regarding higher education IT activities pursuant to Sections 15-10-44 and 54-35-15.2. The report indicated the University System had the following major IT initiatives for the 2019-21 biennium:

- The facilities asset management information system cloud project was completed during the 4<sup>th</sup> quarter of 2019. The project was completed at a cost 20.2 percent more than the original baseline and 0.5 percent more than the revised baseline. The project was completed 81.7 percent behind the original baseline schedule and 63.1 percent behind the revised baseline schedule.

- The Online Dakota Information Network, or "ODIN," replacement project, also known as the academic library management system, was completed during the 3<sup>rd</sup> quarter of 2020 on schedule and 13.7 percent under budget.
- The Novelution electronic grants administration project was in green status during the 3<sup>rd</sup> quarter of 2020. The project was 31.4 percent under budget and 0.1 percent behind schedule compared to the project revised baseline. The North Dakota State University (NDSU) and the University of North Dakota (UND) went live with the first project module in November 2019 and January 2020, respectively. The project is a modular-based electronic grants administration application to provide a central repository for researchers to monitor projects and improve accuracy.
- The University System worked with UND and NDSU on a mobile application pilot project called Target - X, which replaced the previous mobile application for course registration. The University System has deployed the application to all campuses.
- UND is deploying a new facilities management software to replace the current facilities asset management information system. The project was in the planning stage during the 3<sup>rd</sup> quarter of 2020 and a contract has been signed with a vendor.

### **Elementary and Secondary Education**

The committee received information from EduTech regarding IT initiatives for elementary and secondary education. EduTech provides IT services and professional development to North Dakota elementary and secondary schools, manages PowerSchool application upgrades, and assists faculty and staff with the implementation of Microsoft Office 365 in schools. The committee was informed ITD and EduTech combined the organizations' separate help desks into one IT Help Desk system for state government and K-12 education.

## **OTHER INFORMATION**

### **Information Technology Coordination of Services**

Section 54-59-12 provides for the review and coordination of IT between ITD, higher education, and political subdivisions. In addition, Sections 15-10-44 and 54-35-15.2 provide the Information Technology Committee is to receive information from the State Board of Higher Education regarding higher education IT planning, services, and major projects.

The committee received information from ITD and the University System regarding coordination of services. The committee was informed ITD has frequent discussions with the University System and political subdivisions regarding IT needs of state and local government agencies. The University System and ITD have weekly interactions with network teams and frequent meetings with executive teams.

### **Information Technology Department Service Rates**

The committee received information from ITD regarding the results of ITD's review of service rates charged to state agencies, including rate structure and agency billing pursuant to Section 9 of House Bill No. 1021 (2019).

The Information Technology Department sets rates for services provided to state agencies in April of each even-numbered year for the subsequent biennium. The rates are effective July 1 of the following year. The committee was informed the revenue received from state agencies for services provided has historically originated equally from the agencies' general, federal, and special fund appropriations. The department charges an overhead rate of 4.9 percent for services provided to state agencies.

The Information Technology Department reported ITD rate changes for the 2021-23 biennium will result in an overall reduction of expected state agency billings of approximately \$825,000. Costs related to staffing and maintaining the mainframe will increase approximately \$600,000. A technology fee change will result in network rates increasing state agency billings by approximately \$350,000. The committee was informed 2021-23 biennium rates are expected to decrease state agency billings for general disk and server hosting services by \$1.2 million, ConnectND hosting by \$250,000, and telephone services by \$450,000.

### **Information Technology Department Building**

The committee received information from ITD regarding ITD's leased building located on Normandy Street in Bismarck. The department vacated the building in August 2019 due to quality of construction and structural integrity concerns related to the building foundation, floors, and other areas. The committee was informed ITD would continue to pay for the lease of the building, but the building landlord agreed to pay all construction expenses to fix the building, any costs to relocate ITD staff to new locations, and any rent expenditures incurred by ITD as a result of the relocation. The Information Technology Department reported there would be no additional costs to the state while the building was under repair.

The building was available to resume occupancy in late July 2020 but due to the COVID-19 pandemic, most of ITD's staff was working remotely. As a result, ITD chose not to reoccupy the building, instead opting to have employees work remotely permanently. The department started occupying the building in 2015 and the lease will expire in 2025. The Information Technology Department reported telework has resulted in various efficiencies, resulting in ITD exploring options to terminate the building lease. Until the lease is terminated, ITD will continue to pay rent for the building regardless of whether ITD staff occupy the building.

### **Employee Bonuses**

Section 54-06-30 allows state agencies to pay performance bonuses of up to \$1,500 each fiscal year to an employee. Section 54-06-31 allows state agencies to develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations. There are no statutory limitations on the amount of retention or recruitment bonuses a state employee may receive. Funding for bonuses must be provided from within each agency's salaries and wages budget.

The committee received information from ITD regarding bonuses provided to ITD employees in fiscal year 2020 and the methodology used to determine the bonuses provided. The committee was informed the COVID-19 pandemic caused ITD staff to work overtime to meet demand for telework and other IT services. From March 2020 through July 2020, ITD reported its staff worked 16,849 hours of overtime.

Because ITD staff are not eligible to be compensated for overtime worked, ITD chose to provide bonuses to certain employees. To be eligible for a bonus, an individual had to have worked a minimum of 20 hours of overtime related to the COVID-19 pandemic each month during March 2020 and April 2020. The bonuses provided to staff were paid based on a formula that considered the employee's hourly wage and 75 percent of overtime hours worked in excess of the first 20 overtime hours worked during March 2020 and April 2020. The Information Technology Department awarded performance bonuses to 15 employees during fiscal year 2020, totaling \$3,000, or an average of \$200 per employee. The department awarded retention bonuses to 75 employees during fiscal year 2020, totaling \$169,959, or an average of \$2,266 per employee. The department awarded recruitment bonuses to 6 employees during fiscal year 2020, totaling \$15,500, or an average of \$2,583 per employee. Bonuses provided to ITD staff in fiscal year 2020 were paid using special fund salaries and wages funding available due to vacant position savings within the department.

### **Employees Working Out of State**

The committee received information from ITD regarding the number of ITD employees working outside North Dakota. Of ITD's 402 FTE positions, 17 FTE positions, or 4 percent, were working permanently out of state as of August 2020. The Information Technology Department reported difficulty recruiting IT and cybersecurity employees in North Dakota due to low salaries offered at the state and North Dakota IT professionals lacking certain IT skills. Providing the option to telework from other states allows ITD to attract IT and cybersecurity professionals. The Information Technology Department reported it is more cost-effective for ITD to allow certain employees to work outside North Dakota rather than contracting with a vendor to perform the work.

### **2021-23 Biennium Budget Request**

The committee received information from ITD regarding the department's 2021-23 biennium budget request, which will focus on IT unification, cybersecurity, modernization of technology, and NDHIN. The department's 2021-23 biennium base budget request totals \$211.3 million, of which \$15.4 million is from the general fund, \$193.8 million is from special funds, and \$2.1 million is from federal funds. The request includes a 10 percent reduction from the 2021-23 biennium base budget to comply with the Governor's budget guidelines.

The department's 2021-23 biennium budget request, including optional requests, totals \$377.8 million, of which \$155.6 million is from the general fund, \$220.1 million is from special funds, and \$2.1 million is from federal funds. The optional requests are \$166.8 million more than the 2021-23 biennium base budget, of which \$140.5 million is from the general fund and \$26.3 million is from special funds. The \$166.8 million of optional requests includes a special fund decrease of \$5.6 million for cybersecurity initiatives and increases of:

- \$60 million from the general fund for the replacement of old technology, including mainframe, flat file databases, crystal reports, Lotus Notes, and client server technologies;
- \$40 million from the general fund for business process improvement and organizational change management to replace manual, repeatable processes with automated processes;
- \$25.9 million from the general fund for 29 new FTE cybersecurity positions;
- \$6.8 million from the general fund for NDHIN; and
- \$31.9 million from special funds for the transfer of 66 FTE IT positions in other state agencies, including 50 FTE positions in the Governor's cabinet agencies and 16 FTE positions from the Bank of North Dakota as part of ITD's 2021-23 biennium IT unification initiative.

### **Health Information Technology**

The committee received information from ITD regarding the continued development of NDHIN. The North Dakota Health Information Network is a public-private partnership for the secure exchange of health information that enables clinical users, such as providers, nurses, and clerical staff to easily and efficiently view information relating to a patient's electronic medical record. The North Dakota Health Information Network expansion project will establish health information network infrastructure, provide medication information and registry connections, and allow for administrative process automation and simplification.

The committee was informed federal funding available for health IT initiatives is anticipated to be reduced for the 2021-23 biennium. The federal matching funds percentage for health IT was scheduled to decrease from a 90 percent match to a 75 percent match but due to a new federal funding model being adopted based on state population, the federal match will be reduced to 20 percent. As a result, ITD anticipates requesting a general fund appropriation of \$6.8 million for health IT during the 2021-23 biennium, primarily for the continued expansion of NDHIN.

### **Distributed Ledger Technology Report**

The committee received information from ITD regarding the implementation of distributed ledger technologies pursuant to Section 54-59-02.2. The department has identified multiple potential uses of blockchain technology in state government and has built a proof of concept application that allows for citizen data to be verified using blockchain in a mobile application. The mobile application could be used for licensing, such as driver's licenses or fishing licenses, and human services programs, such as the supplemental nutrition assistance program.

### **Statewide Longitudinal Data System Initiative**

The Legislative Management assigned the committee the responsibility to receive a report from the Statewide Longitudinal Data System Committee on the status of SLDS pursuant to Section 54-59-36. The committee received information from ITD regarding the status and development of SLDS. During the 2019-20 interim, a new SLDS educators' portal was developed that includes interactive dashboards, application presentations, and reports. The Statewide Longitudinal Data System Committee received federal funding of \$200,000 which allows the SLDS e-transcripts system to publish high school transcripts to a website and mobile wallet for each student to view. The e-transcripts system will allow students to share transcripts with schools and employers.

### **Higher Education Local Area Network Services**

The committee received information from ITD regarding a report of local area network services provided in student housing facilities on higher education campuses and any contracts entered pursuant to Section 1 of Senate Bill No. 2318 (2019). In November 2019, a contract was executed with Dakota Carrier Network to provide local area network services on higher education campuses. Through August 2020, none of the higher education institutions utilized the contract.

### **Vital Records Report**

The committee received information from DOH regarding an electronic access to vital records report pursuant to Section 7 of House Bill No. 1004 (2019). The intent of the section was for DOH to implement a program to expand access to vital records either through web access or by kiosks located in at least eight different locations in the state.

The committee was informed vital records requests are received through DOH's secure web application (51.6 percent), mail (32.5 percent), or in-person (15.9 percent). The State Department of Health reported allowing county issuance would add costs to the DOH budget and indicated training county staff would increase security risks related to vital record documents compared to providing services with limited staff in a controlled and secure location in Bismarck. The State Department of Health indicated the most efficient and inexpensive option to increase access to vital records is to expand online ordering. The department is working with ITD to identify ways to improve online processes for vital record requests, including adding mobile capabilities to DOH's online records system.

### **State Auditor's Information Technology Department Operational Audit**

In August 2019, the committee received information regarding the State Auditor's operational audit of ITD for the 2-year period ending June 30, 2018, including ITD's inventory system, the status of the unallocated assets identified in the report, and plans to improve the inventory system. The audit reported 217 devices were unaccounted for, of which 24 were considered sensitive devices with an original value of \$92,000. The Information Technology Department reported all devices noted in the audit were managed in an old inventory system and that a new inventory system was implemented in May 2019. Of the sensitive devices identified in the audit report, ITD found all but 10 and the remaining devices have a total book value, after accounting for depreciation expense, of \$0. The remaining items have been appropriately surplus but were not reflected in the ITD inventory system. The committee was informed the risk of sensitive information from these devices being available to unauthorized individuals is minimal.

### **Information Technology Security Audits**

In September 2020, the committee received information from the State Auditor regarding an update of IT security audits of ITD and the University System. Senate Bill No. 2004 (2019) included funding of \$450,000 for the State Auditor's office to contract with consultants to test IT system security of ITD and the University System. The State Auditor's office planned to contract with ManTech International Corporation to conduct the audits of ITD and University System IT systems but due to the COVID-19 pandemic, ManTech was not able to conduct the audits. In August 2020, the State Auditor's office entered a contract with one of ManTech's subcontractors to conduct the audits. The audit reports are expected to be completed by the end of January 2021. A public report and a confidential report will be produced.

# JUDICIARY COMMITTEE

The Judiciary Committee was assigned five studies:

- Section 6 of House Bill No. 1050 (2019) directed a study of the potential adoption of an initiated measure allowing the use of recreational marijuana, including the potential benefits and detriments of legalizing recreational marijuana.
- Section 6 of House Bill No. 1453 (2019) directed a study of the state's civil commitment laws and procedures under North Dakota Century Code Chapters 25-03.1 and 35-03.2 and the behavioral health and civil justice systems to determine whether steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill.
- Section 34 of Senate Bill No. 2015 (2019) directed a study of the state's charitable gaming laws, including an evaluation of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters; an evaluation regarding the appropriate limitations, restrictions, and oversight if new games are added; an evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and a review of whether the laws regarding eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate.
- Section 1 of Senate Bill No. 2148 (2019) directed the study of the implementation and requirements of Article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the Legislative Assembly and the Ethics Commission, and potential issues under the United States Constitution and the Constitution of North Dakota. The study required a review of existing laws and laws enacted to implement Article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding Article XIV is necessary or desirable; and an effective means to educate public officials, lobbyists, and the public on the requirements of Article XIV and other laws regarding government ethics.
- House Concurrent Resolution No. 3031 (2019) directed a study of the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

The Legislative Management delegated to the committee the responsibility:

- For statutory and constitutional revision.
- To review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President (Section 54-03-32).
- To review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws under Section 54-35-02.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from the Attorney General by November 1 of each year summarizing activity of any civilly forfeited property (Section 19-03.1-36.8(4)).
- An annual report from the State Department of Health (DOH) on the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers, and expenses incurred and revenues generated by the department (Section 19-24.1-39).
- A report from the Department of Human Services (DHS) on services provided by the Department of Corrections and Rehabilitation (DOCR) for individuals at the State Hospital who have been committed to the care and custody of the executive director of DHS (Section 50-06-31).
- A biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering (Section 53-06.2-04).
- A report from the North Dakota Lottery regarding the operation of the lottery (Section 53-12.1-03).

- An annual report from the director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices (Section 54-61-03).
- An annual report from the Task Force on the Prevention of Sexual Abuse of Children before July 1 of each even-numbered year with any findings and recommendations. Before July 1, 2024, the task force shall submit a final report (2019 House Bill No.1237, § 1).
- A report from the Attorney General during the 2019-20 interim regarding the status and results of the human trafficking victims grant program (2019 Senate Bill No. 2003, § 10).
- A report from the Commission on Juvenile Justice with the commission's findings and recommendations which may include a legislative strategy to implement the recommendations (2019 Senate Bill No. 2313, § 4).

Committee members were Representatives Lawrence R. Klemin (Chairman), Ruth Buffalo, Karla Rose Hanson, Pat D. Heinert, Mary Johnson, Daniel Johnston, Terry B. Jones, Karen Karls, Jim Kasper, Kim Koppelman, Aaron McWilliams, Bob Paulson, Shannon Roers Jones, and Steve Vetter and Senators JoNell A. Bakke, Michael Dwyer, John Grabinger, Diane Larson, Larry Luick, and Janne Myrdal.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## **RECREATIONAL MARIJUANA**

### **Background**

According to the director of the National Institute on Drug Abuse, changes in marijuana policies across states legalizing marijuana for medical and recreational use suggests marijuana is gaining greater acceptance in society, making it important for people to understand what is known about the adverse health effects and the potential benefits linked to marijuana. According to the 2015 National Survey on Drug Use and Health, marijuana is the most commonly used illicit drug, with 22.2 million people reporting marijuana use in the last month.

### **State Action**

Washington, Colorado, and Oregon have regulatory schemes and tax structures in place for marijuana sales. Colorado and Washington collect tax revenues similarly in that approximately 30 percent of the total revenue is deposited in the general fund; about 35 percent is dedicated to health care services; 10 percent to education and prevention; and the remaining revenue is used for research, local government, and other efforts. Data collected by the National Conference of State Legislatures (NCSL) of Colorado's 2017 revenue report indicated over \$227 million was collected in taxes, licenses, and fees related to marijuana in 2017 for a total of nearly \$639 million collected since adult-use sales began in 2014. Colorado's marijuana tax revenue accounts for 2.5 percent of Colorado's total budget and provides for program oversight and enforcement, local community enforcement assistance, school construction grants, substance use disorder and prevention, treatment efforts and public health surveillance, and other public safety education efforts. Washington collected a total of \$319 million in taxes and licensing fees in 2017, which was \$113 million more than the liquor tax revenue in the same period.

Colorado and Washington use a threshold of 5 nanograms or more of tetrahydrocannabinol (THC) per milliliter of blood as a measurement for driving under the influence of cannabis. Several states with legalized medical or recreational marijuana use leave testing and employment decisions up to the discretion of the individual employer. According to NCSL, the trend among states with employment policies is, if an employee is not bringing medical marijuana to work or working in a job in which impairment could result in serious harm to others, employers are not authorized to take medical marijuana use or positive drug test results into consideration when making hiring and firing decisions. In 2017, Maine's State Legislature placed a moratorium on an initiative passed by popular vote in 2016, which would have permitted the recreational use, retail sale, and taxation of marijuana and included an employment and antidiscrimination provision for recreational users. The moratorium delayed parts of the law regarding retail sales and taxation until at least February 2018. In May 2018, the legislature overrode the Governor Paul LePage's veto of the implementation of a regulatory structure for adult-use marijuana. Sales of recreational marijuana in Maine began on October 9, 2020.

### **Federal Oversight**

Under federal law, marijuana is a Schedule I drug, is considered dangerous, has no accepted medical use, and has a high potential for abuse. In January 2018, Attorney General Jeff Sessions issued a marijuana enforcement memorandum, which rescinded the "Cole Memorandum," and allows federal prosecutors to decide how to prioritize enforcement of federal marijuana laws. Specifically, the Sessions Memorandum directs United States Attorneys to "weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community."



## **Testimony and Committee Considerations**

The committee received testimony from a representative from DOH, the Chief Deputy Attorney General, the representatives from the sponsoring committees of potential initiated measures relating to the legalization of recreational marijuana, representatives of national marijuana operations and organizations, and several members of the public. The committee's deliberations focused on the impacts of legalized recreational marijuana.

A representative from DOH indicated it is difficult to determine the impact legalizing recreational marijuana would have on the medical marijuana program. The committee received considerable testimony indicating the general perception that states with legalized recreational marijuana benefit from increased tax revenue is not entirely accurate. Testimony indicated although the tax rate for marijuana is nearly 30 percent in Colorado, less than 1 percent of marijuana tax revenue goes directly to the state general fund. The 30 percent tax consists of a 2.9 percent sales tax imposed on medical marijuana and a 15 percent wholesale excise tax, and a 15 percent retail excise tax imposed on recreational marijuana. Testimony indicated federal and state data suggest a loss of \$10 to \$15 for every \$1 generated in tax revenue as a result of increased costs associated with public health, public safety, medical care, and other administrative costs.

The committee received testimony from representatives from the sponsoring committees of potential initiated measures relating to the legalization of recreational marijuana indicating one measure would amend the Constitution of North Dakota and the other would amend existing statutes within the Century Code. Testimony indicated although both measures received support and were close to the signature requirements necessary to be placed on the ballot, due to the challenges of gathering signatures due to the Coronavirus (COVID-19) pandemic, neither proposed measure was submitted for placement on the November 3, 2020, ballot.

## **Conclusion**

The committee makes no recommendation with respect to the recreational marijuana study.

## **CIVIL COMMITMENT**

### **Background**

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. The Legislative Assembly enacted Senate Bill No. 2164 (1977), creating Chapter 25-03.1. The bill established many of the commitment procedures for individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law. A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted.

### **Commitment Procedures for Mentally Ill and Chemically Dependent Individuals**

Chapter 25-03.1 provides for commitment procedures for mentally ill and chemically dependent individuals. Section 25-03.1-02(13); however, specifically exempts an individual with an intellectual disability from the definition of mentally ill person.

Generally speaking, there are three reasons why an individual would be subject to involuntary civil commitment under modern statutes--mental illness, developmental disability, and substance addiction. In the case of mental illness, dangerousness to self or others defines the typical commitment standard, with almost all states construing the inability to provide for one's basic needs as dangerousness to self. In terms of process, every state provides for a hearing, the right to counsel, and periodic judicial review, while most states have statutory quality standards for treatment and hospitalization environment.

### **Residential Treatment Centers for Children**

Chapter 25-03.2 was enacted in 1989 and revised by Senate Bill No. 2130 (2007) to specify the chapter relates to psychiatric residential treatment facilities. For purposes of Chapter 25-03.2, "child" or "children" means "a person or persons under the age of twenty-one."

### **Involuntary Commitment Case Law**

*Olmstead v. L.C.*, 527 U.S. 581 (1999), is a United States Supreme Court case regarding discrimination against people with mental disabilities. In this case, the Court held under the federal Americans with Disabilities Act of 1990, 42 U.S.C. 126, individuals with mental disabilities have the right to live in the community rather than in institutions if, in the words of the opinion of the Court, "the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." The case was brought by the Atlanta Legal Aid Society, Inc.

About 10 years after the *Olmstead* decision, the State of Georgia and the United States Department of Justice entered a settlement agreement to cease all admissions of individuals with developmental disabilities to state-operated, federally licensed institutions ("State Hospitals") and, by July 1, 2015, "transition all individuals with developmental disabilities in the State Hospitals from the Hospitals to community settings," according to a Department of Justice fact sheet about the settlement. The settlement also called for serving 9,000 individuals with mental illness in community settings.

### **Testimony and Committee Considerations**

The committee received testimony from representatives of the district courts, a representative from DHS, and members of the legal community. The committee's deliberations focused on whether steps could be taken to prevent and decrease the incidence of violence committed by persons who are mentally ill.

The committee received testimony indicating a general lack of resources for treatment services for individuals requiring anything beyond an initial screening. The committee received testimony identifying areas for improvement within Chapter 25-03.1. Testimony indicated a need for additional training among judges and court staff to ensure the commitment procedure is implemented in a unified manner throughout the state. Testimony also indicated a lack of mental health services in the western part of the state.

The committee considered a bill draft [21.0038.01000] relating to preliminary treatment and involuntary hearings. The bill draft requires all parties in a civil commitment proceeding to receive a copy of the medical report pertaining to the hearing at least 24 hours before the hearing. The bill draft also updates references to coincide with existing definitions.

The committee considered a bill draft [21.0107.03000] relating to the voluntary surrender of a firearm by a family or household member and the creation of a firearm and suicide prevention video. The bill draft would have required DHS to include a brochure as part of suicide resources offered by the department and to provide the brochure to the Bureau of Criminal Investigation. The bill draft would have created a new section of law for the purpose of establishing a safe harbor provision by allowing a family or household member to voluntarily surrender a firearm to a nonfederal law enforcement agency for temporary safekeeping if the family or household members reasonably believe a firearm owner in the household or another family or household member with access to a firearm is an immediate threat to the owner or someone else in the household. The bill draft also would have required an applicant for a concealed weapons license to view a firearm safety and suicide prevention video.

### **Recommendations**

The committee recommends [House Bill No. 1034](#) requiring all parties in a civil commitment proceeding to receive a copy of the medical report pertaining to an involuntary treatment hearing at least 24 hours before the hearing and updating references to coincide with existing definitions.

## **CHARITABLE GAMING**

### **Background**

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of \$100,000, followed by annual payments of \$75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Section 25 of Article XI of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976 when it was amended to allow certain forms of charitable gaming. After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly followed by another temporary law in 1979, and finally legislation in 1981 which was codified as Chapter 53-06.1. All three laws became effective without the approval of the governor holding office at the time of passage. A bill passed by the Legislative Assembly in 1987 added Chapter 53-06.2, which allowed charitable organizations to conduct pari-mutuel horse racing.

The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee, which suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Changes from that session and others have primarily affected the kinds of games that can be held, the kinds of organizations that can hold the games, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

### **Charitable Organizations**

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming--the kinds of organizations that can conduct the games and the use of the proceeds from the games. The constitutional provision requires the charity to be a bona fide nonprofit veterans', charitable, educational, religious, or fraternal

organization, a civic or service club, or a "public-spirited" organization authorized by the Legislative Assembly. The constitutional provision also requires the net proceeds be used only for "educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

### **Administration of Charitable Gaming Law**

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General who has served as the primary licensing authority since 1977. Local government officials were the primary approving agency for what were known as Class B charities. Since 1979, local government officials have been the primary approving agency for the issuance of a local permit or a charity local permit for conducting raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. Although the Attorney General now licenses charities, local officials remain involved in charitable gaming.

### **Enforcement of Charitable Gaming Laws**

Since the 1977 law, responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991, the Legislative Assembly passed legislation that provided for the State Gaming Commission to have an increased role in charitable gaming enforcement and attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. Primary difficulties encountered in preventing crimes are the volume of activity and subtlety of some of the cheating methods. Likewise, the subtlety of cheating has caused enforcement difficulties. The State Gaming Commission has adopted extensive rules governing accounting procedures and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

In 1991, the State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided the State Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of law or rule. In 1993; however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

### **Federal Oversight**

In 1992, Congress passed the federal Professional and Amateur Sports Protection Act (PASPA) that prohibited states from legalizing sports betting operations, but allowed states already offering sports betting or related games to maintain the current operations. Although other states had the opportunity to offer sports betting at the time, most declined and Nevada was the only state to offer sports betting. In 2014, New Jersey passed a law to repeal the state's ban on sports betting, which was challenged by the National Collegiate Athletic Association (NCAA) and several major professional sports leagues as a violation of PASPA. The case ultimately made its way to United States Supreme Court. In *Murphy v. National Collegiate Athletic Association*, 138 S.Ct. 1461 (2018), the Court held the provisions of PASPA violated the Constitution's anti-commandeering rule that prevents Congress from compelling states to adopt or enforce federal law. The decision paved the way for states to authorize gambling on sports events.

Gaming on Indian reservations is controlled by the federal Indian Gaming Regulatory Act passed by Congress in 1988. One provision of the Act requires the state to negotiate in good faith with any Indian tribe wishing to enter into gaming. The five tribal casinos in the state are operating under the Indian gaming compacts last negotiated with the state in 2013. The five compacts, which are nearly identical, each contain a provision listing the kinds of gaming authorized. In Section 3.1(g), each compact provides, the tribe has the right to operate certain Class III games under the terms of the compact, including "Sports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178, Pt. VI;" Based upon this compact provision and the United States Supreme Court decision, it would appear the tribes now have the authority to operate sports book gaming.

### **Testimony and Committee Considerations**

The committee received information and testimony from representatives of the Attorney General's office, a representative of the Charitable Gaming Association of North Dakota, a representative of the North Dakota Council for Charitable Gaming, owners of establishments in which charitable games are played, a representative of Lutheran Social Services of North Dakota, and a representative of the Gaming Commission for Spirit Lake Nation and National Indian Gaming Association. The committee's deliberation focused on areas of concern in the gaming industry, enforcement, conduct, and play of charitable gaming and recommendations from the industry regarding areas of concern.

The committee received testimony indicating although there has not been a significant increase in gambling addiction since the implementation of electronic pull tabs, this game is relatively new and individuals seeking services are recognizing electronic pull tabs as an area of concern. Testimony indicated although charitable organizations are not seeking to expand gaming, additional staffing within the Attorney General's Gaming Division should be considered.

Testimony noted a lack of oversight on electronic pull tabs is due to insufficient staff. Concerns were expressed regarding the difference in gaming classification of the electronic pull tabs operated through charitable gaming and similar games at the tribal casinos. Testimony indicated although electronic pull tab machines are a welcome addition, the increased costs and regulations associated with electronic pull tab machines has resulted in a decrease in net proceeds for some charitable organizations.

The committee received testimony indicating the revenue at tribal casinos has decreased 41 percent since the implementation of electronic pull tabs and revenue has been stagnant for the last 2 years. Tribal officials contended there may be a possible violation of the Gaming Compact between the state and the tribes as a result of the implementation of electronic pull tabs. Testimony from a representative of the Spirit Lake Nation indicated an interest in bringing sports betting to casinos.

### **Conclusion**

The committee makes no recommendation with respect to the charitable gaming study.

## **ETHICS COMMISSION**

### **Background**

In the November 2018 general election, voters approved a ballot measure creating Article XIV of the Constitution of North Dakota. Article XIV contains several provisions related to government ethics applicable to lobbyists, legislators, other elected and appointed state officials, members of the governor's cabinet, and employees of the legislative branch. Although Article XIV generally became effective on January 5, 2019, several of the sections in the article have delayed effective dates. Some provisions in the article require the Legislative Assembly to enact laws, and many of the provisions in the article existed in statute before Article XIV was created. The Legislative Assembly passed House Bill No. 1521 (2019) to implement parts of Article XIV. On August 8, 2019, the members of the Ethics Commission were selected.

The Ethics Commission created by Article XIV is not part of the executive, legislative, or judicial branch of state government. The five members of the commission are to be appointed by consensus agreement of the Governor, Majority Leader of the Senate, and Minority Leader of the Senate. The members may not hold public office, or be lobbyists, candidates for public office, or political party officials. Article XIV gives the commission authority "to investigate alleged violations of [the commission's] rules, [Article XIV], and related state laws" and mandates the commission maintain a confidential hotline to receive information from any "person acting in good faith." Article XIV also requires the Legislative Assembly to appropriate adequate funds for the commission to carry out its responsibilities.

### **2019 Legislation**

During the 2019 legislative session, an ethics committee in each chamber of the Legislative Assembly was created and tasked with developing legislation to implement Article XIV. The Senate Ethics Committee was assigned Senate Bill No. 2148, which originally contained provisions to implement Article XIV but was amended to require this study. The House Ethics Committee was assigned House Bill No. 1521, which was passed by both chambers after several hearings and amendments.

House Bill No. 1521 included 28 sections that fall into four broad categories. The first five sections of the bill amended sections of Chapter 16.1-08.1, which regulates campaign finance. These sections implemented Section 1 of Article XIV regarding transparency of campaign contributions and expenditures, and provided a penalty for violations of subsection 4 of Section 2 of Article XIV, which prohibits the personal use of campaign contributions. Sections 6 through 24 of House Bill No. 1521 amended Chapter 28-32 and require the Ethics Commission created by Article XIV to follow many of the procedures for adopting rules that executive branch agencies are required to follow. Section 25 of House Bill No. 1521 created Chapter 54-66, which implements multiple parts of Article XIV and establishes procedures and requirements for the Ethics Commission. The chapter also authorizes civil penalties for violations of Article XIV provisions and gives the Secretary of State and Ethics Commission authority to enforce certain ethics laws. The remaining three sections appropriated funds to the Ethics Commission, authorized the commission to hire 2 full-time equivalent (FTE) positions, and provided effective dates for other sections of the bill.

### **Testimony and Committee Considerations**

The committee received testimony from a representative of the Ethics Commission, representatives of the Montana State Legislature, a representative of the North Dakota Catholic Conference, a representative from the Institute for Free Speech, and a representative of the Campaign Legal Center.

Testimony indicated minimal legislative changes are necessary to implement Article XIV and the Ethics Commission is working to establish rules. Testimony also indicated some states have additional statutory language relating to dark money in an effort to provide for complete transparency surrounding monetary contributions. Testimony from a representative of the Institute for Free Speech indicated the existing definition of "ultimate of true source" leaves some ambiguity and room for enforcement difficulties and could be amended to specify the criteria the Ethics Commission

must consider to determine what a donor knew at the time of the donation. In addition, the committee received testimony indicating a bright line definition of when funds are given in connection with political activity could be included.

Testimony from a representative of the Ethics Commission indicated the commission is working to create and implement a complaint process and finalize ethics rules by the end of 2020.

The committee considered a bill draft [21.0059.01000] relating to rulemaking, complaint handling procedures, removal, and immunity for the Ethics Commission. The bill draft would have updated definitions and the complaint process to align with Article XIV, established penalties for violations of the gifting rules, and updated reporting guidelines relating to lobbyist expenditures.

The committee considered a bill draft [21.0060.01000] relating to reporting the ultimate and true source of funds and political advertisements. The bill draft would have created transparency standards for independent expenditures, addressed concerns relating to dark money, and established parameters for public campaign finance reports.

The committee received testimony in support of the bill draft contending the disclosure standards would not limit free speech. In addition, it was argued the bill draft would add transparency to the election process, allowing voters to know the ultimate and true source of funding for election ads.

The committee considered a bill draft [21.0080.02000] relating to written advisory opinions regarding ethics. The bill draft would authorize the Ethics Commission to provide written advisory opinions upon the request of a public official, candidate for elected office, or lobbyist. The bill draft also would provide criminal and civil penalties may not be imposed upon an individual who acts in accordance with an ethics advisory opinion.

The committee discussed the benefit of giving elected officials a method for requesting advisory opinions similar to the way members of the State Bar Association of North Dakota request advisory opinions relating to the conduct of licensed attorneys. The committee was informed an elected official could rely on the advisory opinion and likely avoid violating an ethics rule if the elected official followed the advisory opinion.

### **Recommendations**

The committee recommends [Senate Bill No. 2034](#) authorizing the Ethics Commission to provide written advisory opinions upon the request of a public official, candidate for elected office, or lobbyist.

## **JUVENILE JUSTICE**

### **Background**

Section 27-20-03 provides the Juvenile Court has exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 and is not married or under the age of 20 with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home; or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

### **Testimony and Committee Considerations**

The committee received testimony from a representative of the Division of Juvenile Services of DOCR, representatives from the Council of State Governments (CSG), representatives from the Juvenile Court, a representative from DHS, a representative from the North Dakota Association of Counties, a representative from the Police Youth Bureau, and a representative from the Juvenile Justice Commission.

Testimony indicated the variance in the state's juvenile crime rate over the past 30 years is not more than 1 per 1,000 youth in any given year. The committee also received information regarding how the Juvenile Court works closely with local schools to provide services within schools. According to reports, with the right policies and effective use of resources prioritized for youth with the highest risk to reoffend, the number of youth who formally come into contact with the juvenile justice system can safely be reduced while improving outcomes.

Representatives from CSG indicated the Justice Center identified five initial recommendations for system improvement in the state--decriminalizing unruly behaviors and developing pathways to serve youth outside the justice system; establishing more stringent criteria and research-based processes for system decisions; investing limited resources for building a more robust continuum of community-based services across the state; strengthening commitment to and capacity for evidence-based services, quality assurance, and data collection; and aligning statutes with research and best practices.

The committee considered a bill draft [21.0150.03000] relating to the Uniform Juvenile Court Act. The bill draft would separate the existing sections within Chapter 27-20 into new chapters relating to the Uniform Juvenile Court Act, delinquency, and child welfare while incorporating the changes suggested by CSG.

The committee discussed the length of the bill while understanding although the bill appears to contain all new language, the repeal of Chapter 27-20 required a reorganization of existing law into separate chapters and the updating of numerous cross-references.

Testimony in support of the bill draft indicated the bill draft would incorporate best practices already in use by the Juvenile Court to create efficiencies, improved public safety, and better youth outcomes.

The committee discussed the need to continue the study of the juvenile justice system while working in tandem with the Commission on Juvenile Justice to ensure the youth of the state receive the support necessary to be successful. The committee also discussed the need to consider best practices among Native American youth as the Native American population has a higher incarceration rate through adulthood.

The committee considered a bill draft [21.0171.01000] relating to a continued study of the juvenile justice system with a focus on a review of the effective intervention, resources, and services for children.

### **Recommendations**

The committee recommends [House Bill No. 1035](#) relating to a reorganization of the Uniform Juvenile Court Act and an inclusion of the best practices in use by the Juvenile Court and [House Bill No. 1036](#) relating to a continued study of the juvenile justice system, including a review of the effective intervention, resources, and services for children.

### **UNIFORM LAWS REVIEW**

The North Dakota Commission on Uniform State Laws consists of 12 members. The primary function of the commission is to represent North Dakota in the Uniform Laws Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws. The Uniform Laws Commission consists of representatives of all states, and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions. The commission presented these recommendations to the committee:

- Revised Uniform Athlete Agents Act (amendments), which the ULC approved in 2015 and amended in 2019. The Revised Uniform Athlete Agents Act (RUAAA) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states, including North Dakota in 2003. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents.
- Uniform Electronic Wills Act, which the ULC approved in 2019. The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect.
- Faithful Presidential Electors Act, which the ULC approved in 2010. The Uniform Faithful Presidential Electors Act (UFPEA) provides a statutory remedy if a state presidential elector fails to vote in accordance with the voters of the elector's state.
- Revised Unclaimed Property Act, which the ULC approved in 2016. The Revised Uniform Unclaimed Property Act (RUUPA) is the latest revision to the Uniform Unclaimed Property Act, first promulgated in 1954 and last updated in 1995. The Act requires holders of unclaimed property to turn unclaimed property over to the state unclaimed

property administrator after a suitable dormancy period so the administrator can attempt to reunite the property with its rightful owner.

- Uniform Pretrial Release and Detention Act, which the ULC approved in 2020. The Uniform Pretrial Release and Detention Act creates a comprehensive procedural framework for release and detention determinations after arrest. The commission recommends the North Dakota Supreme Court consider adopting the appropriate portions of this Act in the form of court rules.

### **Recommendations**

The committee makes no recommendation regarding these uniform Acts.

### **TECHNICAL CORRECTIONS**

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee considered a bill draft [21.0199.01000] addressing the following statutory provisions:

- Section 4.1-01-19. The section, relating to the federal environmental law impact review fund, created in Section 4.1-01-21, is referenced twice in Section 4.1-01-19. The bill draft corrects the inadvertent omission of the word "review."
- Section 10-19.1-115. The section relates to involuntary dissolution under the North Dakota Business Corporation Act. Subsection 2 provides the manner in which a court may grant equitable relief or dissolve a corporation, which includes in an action brought by a shareholder when a corporation's period of duration has expired and an extension has not been granted. Section 10-19.1-115 references the extension provisions provided in Section 10-19.1-124. However, the extension provisions are provided in Section 10-19.1-127. The bill draft corrects the cross-reference error.
- Section 15.1-07-33. The section references the North Dakota educational technology council which was repealed by Senate Bill No. 2215 (2019). The inadvertent failure to remove the reference to the repealed council is corrected in the bill draft.
- Section 23-02.1-27. The bill draft changes the reference to the "department of information technology" to the "information technology department," which is the correct name of the department.
- Section 23-07-07.6. This section references a "significant exposure" as defined in Section 23-07.3-01. However, Section 23-07.3-01 was repealed with the repeal of Chapter 23-07.3 in House Bill No. 1410 (2005). The bill draft provides a definition that mirrors the definition of "significant exposure" provided in Section 23-07.3-01 before that section was repealed.
- Sections 43-17-06, 43-17-14, 43-17-17, 43-17-24, 43-17-25, and 43-17-30. These sections relate to the North Dakota Board of Medicine which changed the title of the board's secretary-treasurer position to the title of executive director. The bill draft updates the old position title to the new title of executive director.
- Section 57-07-01.2. The section provides the governor the power to appoint members of certain boards and commissions. Among the boards listed in this section is the state water pollution control board. However, this board was eliminated through the repeal of Section 61-28-03 by Senate Bill No. 2327 (2017). This bill draft removes the reference to the repealed state water pollution control board.
- Section 57-51-16. This section provides the manner in which gross production tax revenue is allocated within counties under certain circumstances. The section directs gross production tax revenue to be allocated within the county in the manner provided in Section 57-51-15(3); however, county allocations are addressed in subsections 4 and 5 of that section as a result of past revision and renumbering of Section 57-51-15. The bill draft corrects the incorrect subsection reference by referencing Section 57-51-15 broadly.
- Section 61-04-06.2. Senate Bill No. 2090 (2019) made various changes to laws pertaining to permits for the appropriation of water, including changing the fund in which application fees related to water use permits are deposited from the water use fund to the resources trust fund. The bill draft clarifies that fees collected related to conditional water permits are deposited in the resources trust fund, rather than the water use fund.
- Section 61-03-05.1. The bill draft repeals Section 61-03-05.1, which inadvertently was not repealed in Senate Bill No. 2090 (2019) and which contains a conflicting requirement to deposit the fees collected under Section 61-04-06.2 in the water use fund, which is no longer used by the State Water Commission.

### **Recommendation**

The committee recommends [Senate Bill No. 2035](#) to make technical corrections throughout the Century Code.

## **REVIEW OF EXECUTIVE ORDERS**

Pursuant to Section 54-03-32, the Legislative Management delegated to the committee the responsibility to review any executive order issued by the President of the United States which has not been affirmed by a vote of the Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The committee monitored and reviewed the executive orders issued between May 2019 and August 2020. The committee concluded there were not any executive orders issued during that period which rose to the level indicated in the directive.

### **Conclusion**

The committee makes no recommendations for further review by the Attorney General and the Governor of any executive order issued between May 2019 and August 2020.

## **COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT**

The committee received a report from the director of the Commission on Legal Counsel for Indigents, as required by Section 54-61-03, regarding pertinent data on the operation, needs, and cost of the indigent defense contract system and any established public defender offices. The commission provides legal services to persons who are indigent and who are charged with misdemeanors and felonies in state district court. The commission also provides counsel to indigent persons who are parties in some juvenile cases and other miscellaneous matters.

In the 2019 fiscal year, the commission provided legal counsel services in over 15,400 case assignments, which was less than fiscal years 2018 and 2017, but higher than any other previous year. The commission's 2019-21 budget consisted of \$18,384,627 from the general fund and \$1,990,035 from the commission's special fund. The special fund consists of statutory fees paid by defendants, which include the court administration fee, an indigent defense/facility improvement fee of \$100, and the \$35 indigent defense application fee from criminal cases.

The report indicated state contractors are compensated at an hourly rate of \$75 per hour whereas federal contractors are compensated at an hourly rate of \$148 per hour in noncapital cases. The report also indicated the commission's employees remain underpaid in comparison to states' attorneys and attorneys in the Attorney General's office and it is becoming increasingly difficult to fill open positions and maintain internal equity, resulting in extremely high turnover. In fiscal year 2019, the employee turnover rate was 27.5 percent and of the 11 employees who left, 8 indicated pay was the primary reason.

## **NORTH DAKOTA RACING COMMISSION**

The committee received a report from the director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The commission's primary responsibilities are to regulate live and simulcast races as well as to license all the participants, including simulcast service providers, tote operators, simulcast site operators, live track providers, simulcast employees, and live racing participants, including owners, trainers, and jockeys.

In the 2019 fiscal year, the account wagering companies produced \$270 million, significantly less than the \$490 million in fiscal year 2018, and \$704 million in fiscal year 2017. The report indicated the impact of these declines is a significant loss of revenue to the general and special funds. The report indicated the decline is due to several factors, including a shift in betting on a global and national basis, regulation changes in other jurisdictions, the introduction of additional wagering opportunities in competitor states in the area of sports betting, and virtual and historic racing.

The report indicated the future of racing is at risk. Although the commission continues to work on multiple areas of improvement with the North Dakota Horse Park, without other sources of funding or support it will be difficult for the North Dakota Horse Park to survive.

## **LOTTERY REPORT**

The committee received a report from the director of the North Dakota Lottery regarding the operation of the lottery pursuant to Section 53-12.1-03. For the 2019-21 biennium, the lottery had a fixed appropriation of \$2,047,060 for salaries and benefits for 10 FTE positions, and \$3,144,394 for operating expenses. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds 8 FTE positions in the Lottery Division, 1 FTE position in the Information Technology Division, and 1 FTE position in the Finance and Administration Division of the Attorney General's office. The appropriation also funds 3 part-time draw operators.

For the 2019-21 biennium, the lottery projected sales of \$60,000,000 and transfers of \$16,485,000 (\$15,000,000 - state general fund; \$640,000 - compulsive gambling prevention and treatment fund; and \$845,000 - multijurisdictional drug task force grant fund). Unaudited ticket sales through December 2019 (first 6 months of the fiscal year) are \$12,060,000. This



reflects a \$7,740,000 decrease in sales or 39 percent decrease compared to the same period last year. Although the lottery is slightly under projections, the lottery anticipated it would meet projected sales for the 1<sup>st</sup> year of the biennium.

### **STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM**

The committee received a report from DHS regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. Since 2007, DOCR has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. According to the report, there are 25 individuals committed for sexual dangerousness and eight individuals on postcommitment community release receiving outpatient treatment in their home community.

### **STATE DEPARTMENT OF HEALTH ON IMPLEMENTATION OF MEDICAL MARIJUANA**

The committee received a report from DOH, as required by Section 19-24.1-39, regarding the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers, expenses incurred, and revenues generated by the department.

The report indicated two manufacturing facilities are registered under the medical marijuana program and 155 health care providers completed written certifications during fiscal year 2019. The report indicated the state's eighth dispensary is anticipated to be opened by the end of 2020.

### **TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN**

The Task Force on the Prevention of Sexual Abuse of Children was created by Senate Bill No. 2342 (2017) for the purpose of gathering information concerning child sexual abuse throughout the state; receiving reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations; creating goals for state policy that would prevent child sexual abuse; and providing policy recommendations. The task force is composed of representatives of state agencies, the Legislative Assembly, nonprofit entities focused on children's health and well-being, Indian tribes, and law enforcement. The task force finalized a logic model with data type, analysis, and reporting mechanism; is looking to secure funding to assist with task force coordination, data collection, analysis, reporting, printing, marketing, and other human resource costs; established subcommittees to focus on specific aspects of the strategic plan; and continues to execute the strategic plan and report process to statewide stakeholders.

### **REPORT ON HUMAN TRAFFICKING VICTIMS TREATMENT AND SUPPORT SERVICES GRANT PROGRAM**

The committee received a report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program. The 65<sup>th</sup> Legislative Assembly approved an appropriation to provide one-time funding for treatment and support services for victims of human trafficking. The report indicated 10 applicants received grants for victim treatment and support services and 3 applicants received grants for sexual assault nurse examiners during the 2019-21 grant period.

### **REPORT ON JUVENILE JUSTICE COMMISSION**

The committee received a report from the Juvenile Justice Commission relating to the findings and recommendations of the commission and the recommendation that [House Bill No. 1035](#) be recommended to the Legislative Management. The report indicated the commission received input from stakeholders and CSG before incorporating suggestions into the recommended bill draft. The report further indicated the Uniform Juvenile Court Act contained in Chapter 27-20 has not been updated or studied for nearly 50 years.

### **REPORT ON CIVILLY FORFEITED PROPERTY**

The committee received a statutorily required report from the Attorney General relating to civil asset forfeitures cases in the state for the preceding fiscal year, including information about the type, approximate value, and disposition of any civilly forfeited property and the amount of proceeds received. The report indicated of the counties that submitted reports, the net total of forfeited currency in the state was \$477,214, the total proceeds from forfeited firearms was \$30,141, and the total proceeds from forfeited firearms was \$300 from August 1, 2019, through June 30, 2020. The report identified three potential areas within Section 19-03.1-36.8 that could be amended to improve reporting. Subsections 1 and 9 of Section 19-03.1-36.8 require law enforcement to file a report with the Attorney General and subsection 3 of Section 19-03.1-36.8 requires prosecutors to provide a copy of the judgement to the Attorney General. The report indicated removing subsection 3 would eliminate the duplication and reduce the burden on local prosecutors without impairing the compilation of data. The report also indicated amending Section 19-03.1-36.8 to include a *de minimus* exception to exclude the reporting of items worth less than \$50 would reduce the reporting burden on law enforcement without significantly impacting public oversight. Amending subsection 9 to require law enforcement to submit reports to the Attorney General annually rather than within 30 days after the report is issued would reduce confusion while achieving the same result.

# LEGACY FUND EARNINGS COMMITTEE

Section 32 of Senate Bill No. 2015 (2019), created a legacy fund earnings committee to study the potential uses of legacy fund earnings. The committee consists of the Majority and Minority Leaders of the House and Senate, the chairmen of the House and Senate Finance and Taxation Committees, the chairmen of the House and Senate Appropriations Committees, two members of the Legacy and Budget Stabilization Fund Advisory Board appointed by their respective Majority Leaders, and the chairman of the Legislative Management. The study must include consideration of using the legacy fund earnings for tax relief, reinvestment, research and technological advancements, economic growth and diversification, workforce development, and career and technical education initiatives. The committee may review the operation of similar funds and may consider public input on the use of legacy fund earnings.

Committee members were Representatives Chet Pollert (Chairman), Josh Boschee, Jeff Delzer, Craig Headland, Keith Kempenich, and Don Vigesaa and Senators Joan Heckaman, Ray Holmberg, Jerry Klein, Jessica Unruh-Bell, and Rich Wardner.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## LEGACY FUND History

In 2010, the voters of North Dakota approved a constitutional amendment to create the legacy fund (Section 26 of Article X of the Constitution of North Dakota). Pursuant to the measure, 30 percent of oil and gas gross production and oil extraction taxes are deposited in the legacy fund. The measure restricted the expenditure of principal and earnings until after June 30, 2017. Up to 15 percent of the principal balance of the legacy fund may be spent during a biennium upon approval of at least two-thirds of the members elected to each house of the Legislative Assembly. The Legislative Assembly may transfer funds from any source to the legacy fund, which become part of the principal of the fund. Interest earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. Pursuant to North Dakota Century Code Section 21-10-12, earnings include interest, dividends, and realized gains and losses, but exclude unrealized gains and losses.

The State Investment Board is responsible for investing the principal of the legacy fund. The 2011 Legislative Assembly established a Legacy and Budget Stabilization Fund Advisory Board to develop recommendations for the investment of the legacy fund and the budget stabilization fund. The goal of the investment strategy is principal preservation while maximizing total returns. The advisory board regularly reviews and approves investment policies.

For the 2011-13 and 2013-15 bienniums, 25 percent of any revenues deposited in the strategic investment and improvements fund were transferred to the legacy fund if the balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month. In House Bill No. 1377 (2015), the Legislative Assembly removed the requirement to transfer additional funding from the strategic investment and improvements fund to the legacy fund.

## Status

During the budgeting process for the 2017-19 biennium, the 2017 Legislative Assembly included \$200 million of estimated legacy fund earnings in the general fund revenue forecast. The 2019 Legislative Assembly increased the estimate by \$100 million to reflect total earnings of \$300 million. The 2017-19 biennium earnings transferred to the general fund at the end of the biennium were \$455.26 million, \$155.26 more than the revised estimate.

The balance of the legacy fund was \$6.12 billion on July 1, 2019. As of July 31, 2020, the legacy fund had a value of \$7.25 billion, and the earnings available to transfer to the general fund at the end of the 2019-21 biennium totaled \$339 million. In March 2020, the fiscal year-to-date net investment returns for the legacy fund decreased to a loss of 7.21 percent due to the market effects of the Coronavirus (COVID-19) pandemic. Investment performance recovered in the spring and summer of 2020 resulting in a gain of 4.23 percent for fiscal year 2020.

The 2019 Legislative Assembly budgeted for \$100 million of legacy fund earnings in the 2019-21 biennium as a part of a plan to transition from spending the earnings in the current biennium to spending the earnings in the subsequent biennium. Senate Bill No. 2362 (2019) included a contingent transfer of \$64.37 million from the general fund to the common schools trust fund if the legacy fund earnings are at least \$164.37 million for the 2019-21 biennium. The 2019 Legislative Assembly approved the contingent transfer to correct a shortfall of oil extraction tax allocations to the common schools trust fund in prior bienniums.

The Office of Management and Budget's September 2020 revised revenue forecast included \$300 million of legacy fund earnings for the 2019-21 biennium. Any excess legacy fund earnings in the 2019-21 biennium may be needed to offset a potential general fund revenue shortfall resulting from decreased state revenues due to the COVID-19 pandemic.

### **BUDGET INFORMATION**

The committee received information from the Legislative Council regarding North Dakota's budget process since the 1980s. The oil boom and bust cycle during the 1980s created budgetary challenges that lasted until the mid-1990s and affected the way the state budgets today. The Legislative Assembly responded to the budget challenges by implementing the following changes:

- Created a permanent oil tax trust fund to reduce the general fund's direct reliance on oil and gas tax revenues;
- Established a budget stabilization fund; and
- Provided separate constitutional allocations of oil and gas tax revenue for a K-12 education stabilization fund.

State revenues increased significantly during the oil boom that began in 2008. 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. The Legislative Assembly changed the oil and gas tax revenue allocation formulas to allocate revenue to various state funds as a way to set aside money for the next biennium and provide volatility protection. 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. The Legislative Assembly's policy of setting aside oil and gas tax revenues for the next biennium helped to lessen the impact of the budgetary challenges during the 2015-17 biennium.

Ongoing general fund revenues have been less than ongoing general fund spending since the 2015-17 biennium. Approximately 8 percent (\$400 million), of the general fund budget for the 2019-21 biennium is directly related to oil and gas tax revenues received during the biennium. The general fund budget also includes \$947 million of indirect oil and gas tax revenue as transfers from other funds. Of the \$5,071 million ongoing "general fund equivalent" 2019-21 biennium budget, \$1,347 million, or 27 percent, is related to oil and gas tax revenues. 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. Options to address the gap between ongoing revenues and ongoing appropriations include growing general fund revenue exceeding projections, increasing general fund taxes, reducing general fund spending, using additional oil and gas tax revenues, and using additional legacy fund earnings.

### **SOVEREIGN WEALTH FUNDS**

The committee received information from the Retirement and Investment Office regarding sovereign wealth funds in the United States, including the Alaska permanent fund, Texas permanent school fund, Wyoming permanent mineral trust fund, and Alabama trust fund. Based on a 2019 survey, the distributions from 6 of the 10 funds analyzed use a percent of market value calculation while the distributions from the remaining 4 funds use investment income. Investment performance varied significantly between the funds, which was likely a result of differences in asset allocations. For 8 of the 10 funds, the principal is restricted permanently, but the principal may be spent from the other 2 funds.

A representative of the Alaska Division of Legislative Finance provided information regarding the Alaska state budget and use of Alaska's permanent fund. The Alaska permanent fund is a constitutionally protected fund that receives a portion of the state's oil and gas revenues and is intended to provide an intergenerational benefit to Alaska's residents. Alaska deposited additional revenue in the permanent fund to offset inflation and created an earnings reserve account to address the volatility of earnings. Some income from the fund pays annual dividends to Alaska's citizens, which began in 1982. In recent years, the dividend payments to citizens have been less than the calculated amount because the permanent fund's earnings were insufficient to meet the state's budgetary needs.

Based on Alaska's experience with the permanent fund over the past 40 years, the Alaska representative posed the following questions for the committee's consideration:

- Is the legacy fund intended to benefit the state's residents while the oil is being produced or when the oil resources are depleted?
- Should the earnings of the legacy fund be reinvested to increase the balance of the fund and future earnings?
- What procedures or methods should be used to reduce the volatility of legacy fund earnings?
- When will the legacy fund earnings be needed to replace declining oil and gas tax revenues in the state budget?

## PROPOSED USES OF LEGACY FUND EARNINGS

### Comments Submitted to the Committee

The committee received comments from 121 individuals including 2 at the August 15, 2019, meeting in Bismarck; 36 at the November 12-13, 2019, meeting in Fargo; 82 at the February 19-20, 2020, meeting in Watford City; and 1 at the July 8, 2020, meeting in Bismarck. The comments were categorized into K-12 education programs, health and human service programs, economic development, infrastructure projects, tax relief programs, or miscellaneous items. Some of the comments included multiple proposals resulting in a total of 176 proposals.

The schedule below summarizes the comments submitted to the Legacy Fund Earnings Committee regarding proposed uses of legacy fund earnings.

Category	Number of Proposals	Examples
K-12 education programs	20 proposals, including: <ul style="list-style-type: none"> <li>• 7 proposals (November 12-13, 2019)</li> <li>• 13 proposals (February 19-20, 2020)</li> </ul>	The proposals include: <ul style="list-style-type: none"> <li>• Free hot lunch to all public school students;</li> <li>• Support for education programs;</li> <li>• Supplemental salary payments for teachers; and</li> <li>• Funding for afterschool programs.</li> </ul>
Health and human services programs	19 proposals, including: <ul style="list-style-type: none"> <li>• 12 proposals (November 12-13, 2019)</li> <li>• 6 proposals (February 19-20, 2020)</li> <li>• 1 proposal (July 8, 2020)</li> </ul>	The proposals include: <ul style="list-style-type: none"> <li>• Health insurance for all North Dakota residents;</li> <li>• Matching grants to charitable organizations;</li> <li>• Issue bonds to support health programs; and</li> <li>• Support for affordable housing.</li> </ul>
Economic development	23 proposals, including: <ul style="list-style-type: none"> <li>• 10 proposals (November 12-13, 2019)</li> <li>• 13 proposals (February 19-20, 2020)</li> </ul>	The proposals include: <ul style="list-style-type: none"> <li>• Matching grants for visitor attractions;</li> <li>• Funding for university research projects;</li> <li>• Funding for workforce development; and</li> <li>• Support for child care programs.</li> </ul>
Infrastructure projects	70 proposals, including: <ul style="list-style-type: none"> <li>• 17 proposals (November 12-13, 2019)</li> <li>• 53 proposals (February 19-20, 2020)</li> </ul>	The proposals include: <ul style="list-style-type: none"> <li>• Capital assistance for school construction;</li> <li>• Grants for school construction projects;</li> <li>• Low-interest rate loans for water projects;</li> <li>• Funding for transportation infrastructure; and</li> <li>• Support for health care infrastructure.</li> </ul>
Tax relief programs	15 proposals, including: <ul style="list-style-type: none"> <li>• 1 proposal (August 15, 2019)</li> <li>• 5 proposals (November 12-13, 2019)</li> <li>• 9 proposals (February 19-20, 2020)</li> </ul>	The proposals include: <ul style="list-style-type: none"> <li>• Elimination of state income taxes;</li> <li>• Funding for property tax relief; and</li> <li>• Not providing tax reductions.</li> </ul>
Miscellaneous items	29 proposals, including: <ul style="list-style-type: none"> <li>• 2 proposals (August 15, 2019)</li> <li>• 7 proposals (November 12-13, 2019)</li> <li>• 20 proposals (February 19-20, 2020)</li> </ul>	The proposals include: <ul style="list-style-type: none"> <li>• Dividend payments to North Dakota residents;</li> <li>• Returning the earnings to the legacy fund;</li> <li>• Expanded services to Native Americans; and</li> <li>• Interest rate buydowns on student loans.</li> </ul>

### Committee Member Proposals

Committee members also submitted proposals regarding uses of legacy fund earnings. One proposal included allocating 25 percent of the legacy fund earnings to the state highway fund to support road maintenance and road

projects. Another proposal returned 25 percent of the legacy fund earnings to the legacy fund and designated the remaining earnings for the following:

- Road projects (40 percent);
- The infrastructure revolving loan fund (20 percent until the fund balance is \$500 million);
- Income tax rate reductions (20 percent); and
- Other purposes designated by the Legislative Assembly (any remaining amount).

The committee also received a proposal to return 20 percent of the earnings to the legacy fund and to allocate the remaining earnings for the following:

- The highway tax distribution fund (25 percent);
- A research and innovation fund (15 percent);
- A human service and public health stabilization fund (15 percent);
- A workforce development and lifelong education fund (10 percent);
- A regional economic development infrastructure fund (15 percent);
- An arts and culture endowment fund (10 percent); and
- A student lunch support fund (10 percent).

## **ADMINISTRATION OF LEGACY FUND EARNINGS**

### **Current Process**

The committee reviewed the process of administering legacy fund earnings. Under the current process, the State Treasurer transfers the earnings of the legacy fund to the general fund at the end of each biennium pursuant to Section 26 of Article X of the Constitution of North Dakota. The earnings of the legacy fund include interest, dividends, and realized gains and losses as defined in Section 21-10-12. The current administrative process is based on transferring all the biennial earnings of the legacy fund to the general fund in accordance with these constitutional and statutory provisions.

The committee reviewed the process of administering earnings of the common schools trust fund. In contrast to the legacy fund, the administration of common schools trust fund earnings reflects a distribution method separate from the earnings of the fund. The earnings of the common schools trust fund are reported in the annual financial statements published by the Department of Trust Lands. The method of distributing earnings from the common schools trust fund is based on 10 percent of the 5-year average of the fund's assets pursuant to Section 2 of Article IX of the Constitution of North Dakota.

### **Potential Concerns**

The committee discussed the following potential concerns associated with the current process of administering the legacy fund earnings:

- **Cashflow** - Even though the earnings are transferred to the general fund on the last day of the biennium, the funding associated with the earnings is included in the current biennial budget as revenue; therefore, the earnings may be appropriated and spent up to 24 months before the cash from the earnings is available to pay the expenditures. This could result in the general fund having insufficient cash to pay for the expenditures. This issue will become more of a concern as the earnings become a greater share of state revenues.
- **Budgeting** - Under the current process, the Legislative Assembly must finalize the revised revenue forecast for the current biennium as well as develop the state budget for the next biennium prior to the earnings amount being known. Because the earnings are generated from the performance of investments, the earnings can be volatile making it difficult to determine a reasonable and reliable estimate. Any significant variance in the earnings affects the budgets of both bienniums.
- **General fund balance** - Because the earnings are recognized as part of the current general fund budget in which the earnings are transferred on the last day, if the investments experience losses in the last couple months of the biennium, the final general fund balance could become negative which would require the governor to direct agencies to reduce budgets in the final days of the biennium. Alternatively, the general fund could have a large surplus if the investments of the legacy fund experience gains in the last couple months of the biennium.

- **Replacing oil revenues** - The primary purpose of the fund is to replace oil and gas tax revenues when oil and gas development activity decreases. Legacy fund earnings may not be sufficient to replace declining oil and gas tax revenues if the earnings are fully committed to supporting ongoing spending items before oil production declines.

## **COMMITTEE CONSIDERATIONS**

### **Percent of Market Value and Legacy Earnings Fund Bill Draft**

The committee considered a bill draft relating to the establishment of a percent of market value method for determining the amount of legacy fund earnings available to be spent each biennium and to the creation of a legacy earnings fund. The bill draft requires the State Investment Board to manage the investment of a newly created legacy earnings fund, establishes the legacy earnings fund, requires the legacy fund earnings to be transferred to the fund, designates a reserve balance, and provides for the calculation of the amount available for appropriation or transfer based on the percent of market value.

In the bill draft, the percent of market value calculation is based on 6 percent of the 5-year average value of the legacy fund assets. The reserve balance in the legacy fund would be invested in the same manner as the legacy fund and would be available only to cover shortfalls that occur when the legacy fund earnings transferred to the fund are less than the calculated amount available for appropriation or transfer. The bill draft would become effective August 1, 2021, with the first transfer of legacy fund earnings to the newly created fund at the end of the 2021-23 biennium.

The committee received information from the Legislative Council regarding the implementation of the percent of market value calculation. Changing the definition of legacy fund earnings in statute to implement the percent of market value as a distribution method would conflict with the constitutional provisions requiring the biennial earnings of the legacy fund to be transferred to the general fund. Applying the percent of market value directly to the legacy fund earnings would require a constitutional change similar to the way the common schools trust fund was changed. The bill draft allows the legacy fund earnings to be distributed using the percent of market value without a constitutional amendment by transferring the earnings from the general fund to a special fund. The constitution does not limit the purposes for using legacy fund earnings after the earnings are transferred to the general fund. As a result, the legacy fund earnings may be transferred to a special fund after being deposited in the general fund without a constitutional conflict. In addition, transferring the earnings to a special fund increases transparency by allowing the Legislative Assembly to separately identify the spending of legacy fund earnings, which ensures the spending is appropriate and balanced with the need to replace declining oil and gas tax revenues.

The committee received information from the Retirement and Investment Office regarding the State Investment Board's support for the implementation of the percent of market value method.

### **Legacy Fund Earnings Committee Bill Draft**

The committee considered a bill draft relating to a legacy fund earnings committee. The bill draft continues the legacy fund earnings committee for the 2021-22 interim with the same committee membership and study purpose.

## **Recommendations**

The committee recommends [House Bill No. 1037](#) relating to the establishment of a percent of market value method for determining the amount of legacy fund earnings available to be spent each biennium and the creation of a legacy earnings fund.

The committee recommends [House Bill No. 1038](#) relating to a legacy fund earnings committee.

# LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee (LAFRC) is a statutorily created committee of the Legislative Management. Pursuant to North Dakota Century Code Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Management. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state money is in compliance with law, legislative intent, and sound financial practices.
- Provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to Section 54-35-02.2, the committee is charged with studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Senators Jerry Klein (Chairman), David A. Clemens, John Grabinger, Jordan Kannianen, Gary A. Lee, Judy Lee, and Jim P. Roers and Representatives Mary Adams, Patrick Hatlestad, Mary Johnson, Keith Kempenich, Gary Kreidt, Vernon Laning, Scott Louser, Mike Nathe, Marvin E. Nelson, Jim Schmidt, Luke Simons, and Wayne A. Trottier.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

During the 2019-21 interim, the State Auditor's office (SAO) and independent accounting firms presented 6 performance audit and evaluation reports and 120 financial or information technology application audit reports. An additional 29 audit reports were filed with the committee but not formally presented. The committee's policy is to hear only audit reports relating to major agencies and audit reports containing major recommendations. However, other audit reports are presented at the request of any committee member. At the end of this report is a listing of audit reports accepted by the committee.

The committee was assigned the following duties and responsibilities for the 2019-20 interim:

1. Receive the annual audit report for the State Fair Association (Section 4.1-45-17).
2. Receive annual audit report from any corporation or limited partnership that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state (Section 10-19.1-152 and 45-10.2-115).
3. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Life Skills and Transition Center (Section 50-06.3-08 and 25-04-17).
4. Receive the annual audited financial statements and economic impact reports from the North Dakota low-risk incentive fund. (Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee.)
5. Receive an electronic copy of the audit report from the North Dakota Stockmen's Association at least once every 2 years. (Section 4.1-72-08 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Management assigned this responsibility to the committee.)
6. Receive the performance audit report of Job Service North Dakota upon the request of the committee (Section 52-02-18).
7. Determine necessary performance audits. (Section 54-10-01(4) provides the State Auditor is to perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component units, as determined necessary by the State Auditor or the committee, and provides for the committee to approve the State Auditor's hiring of a consultant to assist with conducting a performance audit.)
8. Determine the frequency of audits or reviews of state agencies (Section 54-10-01(2)).
9. Determine necessary performance audits by the State Auditor (Section 54-10-01(4)).
10. Determine when the State Auditor is to perform audits of political subdivisions (Section 54-10-13).

11. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (Section 54-10-15).
12. Study and review audit reports submitted by the State Auditor and make recommendations to the Legislative Assembly to reduce a state agency, department, or institution's appropriation if the state agency, department, or institution has failed to correct audit findings (Section 54-35-02.2).

### **GUIDELINES FOR AUDITS OF STATE AGENCIES**

The committee received information on and reviewed guidelines developed by prior Legislative Audit and Fiscal Review Committees relating to state agency and institution audits performed by the SAO and independent certified public accountants. For audit periods covering fiscal years since June 30, 2006, auditors of state agencies and institutions are requested to address the following six audit questions:

1. What type of opinion was issued on the financial statements?
2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?
3. Was internal control adequate and functioning effectively?
4. Were there any indications of lack of efficiency in financial operations and management of the agency?
5. Has action been taken on findings and recommendations included in prior audit reports?
6. Was a management letter issued? If so, provide a summary, including any recommendations and the management responses.

In addition, auditors are asked to communicate to the committee eight issues which identify:

1. Significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.
2. Significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditors' conclusions regarding the reasonableness of those estimates.
3. Significant audit adjustments.
4. Disagreements with management, whether resolved to the auditors' satisfaction, relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.
5. Serious difficulties encountered in performing the audit.
6. Major issues discussed with management prior to retention.
7. Management consultations with other accountants about auditing and accounting matters.
8. High-risk information technology systems critical to operations based on the auditors' overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by auditors are directly related to the operations of an information technology system.

In addition, the SAO developed and the committee began receiving a one-page summary report for operational audits of state agencies. The summary report highlights the objective of the audit, including areas of internal control reviewed, findings relating to legislative intent, suggested areas of operational improvement, and key financial information.

The committee received Legislative Council audit summaries identifying the audit findings and other pertinent information related to the audit reports.

### **COMPREHENSIVE ANNUAL FINANCIAL REPORT**

Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and to conduct a review of the material included in the *State of North Dakota Comprehensive Annual Financial Report*. The report contains the audited financial statements for state agencies and institutions. The committee received and accepted the *State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018*, and the *State of North Dakota Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019*. An unmodified opinion was issued on the financial statements.



## **NORTH DAKOTA UNIVERSITY SYSTEM ANNUAL FINANCIAL REPORT**

The committee received the North Dakota University System's annual financial report for the fiscal year ended June 30, 2018. An unmodified opinion was issued on the financial statements. As of June 30, 2018, the University System had total assets of \$2 billion and total liabilities of \$630 million, resulting in total net assets of \$1.37 billion. The total net assets increased \$50 million during fiscal year 2018.

The committee received the University System's annual financial report for the fiscal year ended June 30, 2019. An unmodified opinion was issued on the financial statements. As of June 30, 2019, the University System had total assets of \$2.13 billion and total liabilities of \$742.2 million, resulting in total net assets of \$1.39 billion. The total net assets increased \$20 million during fiscal year 2019.

### **PERFORMANCE AUDITS AND EVALUATIONS**

The committee reviewed a number of performance audits, all of which were conducted by the SAO pursuant to authority within Chapter 54-10.

#### **State of North Dakota - Special Funds**

The committee received and accepted the performance audit report of State of North Dakota special funds. The committee was informed the audit had the following primary objectives:

- Determine whether general fund resources are being used to supplant special fund resources.
- Determine if selected special funds' balance levels are justifiable.

The committee was informed one compliance finding was found and the client agreed with the SAO's recommendation. The compliance finding was with the State Electrical Board having a fund balance of \$10.6 million, which was significantly more than the average operating costs of the board, providing for 31 months of reserve funds for the board. The board is to bill based on the costs required to operate the board. The SAO found no state law or board policy regarding an appropriate fund balance; however, because the board is to bill cost, a significant ending fund balance represents billing in excess of cost.

#### **University System - Open Education Resources**

The committee received and accepted the performance audit report of the University System's open educational resources (OER). The 2015 Legislative Assembly appropriated \$110,000 of state funds to the University System for the purpose of adopting OER. Based on the analysis of the SAO, students have saved an estimated \$500,000 to \$1,200,000 on the cost of textbooks during the 2016-17 academic year. Courses that use OER materials are identified during the course registration process, so students are aware of which courses offer or have access to OER materials.

#### **University System - Online Education**

The committee received and accepted the performance audit report of the University System's online education. The performance audit included an analysis of the precollege, the 100-level, and 200-level online courses available. The SAO determined, from fall 2014 to spring 2018, the University System could have eliminated 560 online course sections, approximately 15 to 22 percent of online sections, and saved an estimated \$2.9 million by consolidating certain online course sections without impacting the number of students served or number of courses offered.

The University System informed the committee it partially concurs with the audit findings. The University System has been working to improve online course access and efficiency which requires arrangements between institutions and equity and fairness issues to be addressed. Program accreditation requires certain instructor credentials, creating potential issues between institutions and program requirements. As institutions determine the need for a course, they have been utilizing other institutions' online courses to fulfill those needs when possible.

#### **Dakota College at Bottineau Emergency Preparedness**

The committee received and accepted the performance audit report of the Dakota College at Bottineau (DCB) emergency preparedness. The State Board of Higher Education (SBHE) adopted Policy No. 906 in May 2012. Policy No. 906 establishes the requirement for all University System institutions to develop and implement comprehensive emergency management plans. In addition to Policy No. 906, the SAO also reviewed outside sources for guidance on best practices for an emergency preparedness plan. The United States Department of Education and six other federal agencies developed a Guide for Developing High-Quality Emergency Operations Plans for Institutions of Higher Education in 2013, which also was used as reference material for the audit. Policy No. 906 and the federal guide provide a process for identifying high-risk areas where emergencies could occur at

an institution level, and information regarding ways to develop an emergency operations plan to address those high-risk areas.

The goal of the DCB emergency preparedness performance audit was to determine whether the DCB emergency operation plan is designed and implemented pursuant to SBHE policies and best practices, and whether its continuity of operations plan is designed and implemented pursuant to best practices. The SAO determined DCB has an emergency procedures guide, but does not have a comprehensive emergency operations plan. The SAO recommends DCB update its emergency operations and continuity of operations plans in accordance with SBHE's policy and applicable best practices.

### **North Dakota State College of Science Division of Workforce Affairs**

The committee received and accepted the performance audit report of the North Dakota State College of Science (NDSCS) Division of Workforce Affairs. The purpose of the audit was to determine if spending for the Career Workforce Academy was authorized and appropriate, if TrainND Southeast (TrainND SE) was meeting its identified goals, and if TrainND SE was reporting data accurately. The audit found the NDSCS Division of Workforce Affairs engaged in inappropriate activities surrounding the Career Workforce Academy and is not meeting TrainND SE program goals nor accurately reporting its results.

Regarding inappropriate activities surrounding the Career Workforce Academy, the SAO found:

- Undisclosed conflict of interest;
- Failure to provide information to the SAO;
- Unauthorized and questionable spending of state and local funds; and
- Inappropriate methods used to obtain approval for the Career Workforce Academy.

Regarding unmet TrainND SE program goals and inaccurate reporting, the SAO found:

- Inadequate accountability for goals;
- Ineffective controls related to reporting, leading to overstatement of results; and
- Actual results falling short of goals.

The North Dakota State College of Science informed the committee it has changed the institution's business interest form to clarify the information being requested, a staff member monitors the forms, forms are now updated twice a year, and NDSCS is providing additional training to staff. The college also is working with staff to ask better clarifying questions of auditors prior to responding to the auditors' requests for information.

### **University System - Nonresident Tuition**

The committee received and accepted the performance audit report of the University System nonresident tuition. The committee was informed Lake Region State College (beginning in 2003), Minot State University (beginning in 2009), and Williston State College (beginning in 2010) charge nonresident students the resident tuition rate. Minnesota residents, because of the two states' reciprocity agreement, and international students may be charged an increased tuition rate by those campuses. The SAO was unable to isolate the effect on enrollment of offering resident tuition rates to nonresident students due to other events occurring at the same time. The SAO estimates a potential reduction in University System tuition revenue of nearly \$10 million for the fall 2019 semester if all nonresident students attending University System institutions had been charged the resident tuition rate. The SAO estimated more than 2,600 additional full-time students would be needed to replace the revenue reduction.

### **University System Purchasing Card Program Followup**

The committee received and accepted the followup report to the University System purchasing card program performance audit. The report provides information on the status of the recommendations provided in the performance audit report dated August 30, 2016. The objectives of the performance audit followup were to determine the implementation status of the 13 recommendations presented in the performance audit report. Of the 13 recommendations, 12 have been fully implemented, and 1 recommendation has been partially implemented. The recommendation partially implemented related to reviewers receiving sufficient, formally documented training to ensure the role of a reviewer is properly carried out.

The University System informed the committee individuals assigned a purchasing card receive training based on the transactions they are allowed to make. The purchasing cards save the state money by reducing the cost to process checks, and card limitations allow for better internal controls.

#### **North Dakota State University Parking and Transportation Services Department Followup**

The committee received and accepted the followup report to the North Dakota State University (NDSU) Parking and Transportation Services Department performance audit. The report provides information on the status of the recommendations provided in the performance audit report dated February 23, 2017. The objectives of the performance audit followup were to determine the implementation status of the eight recommendations presented in the performance audit report. North Dakota State University Parking and Transportation Services has fully implemented all eight recommendations provided in the performance audit report.

#### **Minot State University Emergency Preparedness Followup**

The committee received and accepted the followup report to the Minot State University emergency preparedness performance audit. The report provides information on the status of the recommendations provided in the performance audit report dated August 22, 2017. The SAO reported all six recommendations had been fully implemented.

#### **University of North Dakota Continuity of Operations Planning Followup**

The committee received and accepted the followup report of the University of North Dakota continuity of operations planning performance audits. The report provides information on the status of the recommendations provided in the performance audit report dated September 11, 2017. The SAO reported all four recommendations had been fully implemented.

### **OTHER REPORTS**

#### **State Auditor's Office External Peer Review**

The committee received the State Auditor's external peer review report. The peer review was conducted remotely by the National State Auditors Association, and the association reviewed the system of quality control of the SAO in effect for the period April 1, 2019, through March 31, 2020. The SAO received a rating of "pass," the highest rating issued.

### **OTHER INFORMATION**

The 2019 Legislative Assembly amended Section 54-10-01 requiring the State Auditor to obtain approval from LAFRC to contract for work required by the federal government and prior to conducting performance audits. Based on an Attorney General's opinion, the State Auditor informed the committee the SAO would not be requesting approval from LAFRC to contract for work required by the federal government or prior to conducting performance audits chosen by the State Auditor.

The committee received information regarding State Auditor fees and the impact to state agencies and other public entities. The State Auditor reported after a review of its internal process and its billing system, the SAO determined the fees being charged for the audits did not cover the cost of performing audits. The SAO has begun utilizing an hourly rate fee structure which results in increased cost to entities. Section 54-10-01 requires the SAO to charge agencies an amount that covers the cost of the audit.

The committee received other information and reports, including an examination report of the Bank of North Dakota by the Department of Financial Institutions pursuant to Section 6-09-29.

The committee was informed by the State Auditor that pursuant to Section 44-08-05.1, the SAO forwarded the Department of Commerce audit for the fiscal years ending June 30, 2019 and 2018 and the State Library audit for the fiscal years ending June 30, 2019 and 2018, to the Attorney General due to possible law violations identified in the audit report and the NDSCS Division of Workforce Affairs performance audit dated March 26, 2019, to the Cass County State's Attorney due to possible law violations identified in the audit report. Later in the interim, the committee was informed by the Attorney General's office investigations were conducted relating to the findings identified in each of the audit reports and the investigations resulted in no criminal charges being filed for any of the individuals involved.

## AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2019-20 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Addiction counselor internship loan program	June 30, 2018 and 2017	July 17, 2019
Addiction counselor internship loan program	June 30, 2019 and 2018	November 6, 2019
Adjutant General	June 30, 2018 and 2017	July 17, 2019
Aeronautics Commission	June 30, 2019 and 2018	November 6, 2019
Ag PACE fund	June 30, 2018 and 2017	July 17, 2019
Ag PACE fund	June 30, 2019 and 2018	November 6, 2019
Attorney General	June 30, 2018 and 2017	July 17, 2019
Bank of North Dakota	December 31, 2018 and 2017	July 17, 2019
Bank of North Dakota	December 31, 2019 and 2018	July 7, 2020
Beginning farmer revolving loan fund	December 31, 2018 and 2017	July 17, 2019
Beginning farmer revolving loan fund	December 31, 2019 and 2018	July 7, 2020
Bismarck State College	June 30, 2018	November 6, 2019
College SAVE	December 31, 2018 and 2017	November 6, 2019
College SAVE	December 31, 2019 and 2018	July 7, 2020
Community water facility loan fund	December 31, 2018 and 2017	July 17, 2019
Community water facility loan fund	December 31, 2019 and 2018	July 7, 2020
Comprehensive Health Association of North Dakota	December 31, 2018 and 2017	November 6, 2019
Dakota College at Bottineau	June 30, 2018	November 6, 2019
Dakota College at Bottineau's emergency preparedness performance audit	June 7, 2018	July 17, 2019
Department of Agriculture	June 30, 2019 and 2018	October 7, 2020
Department of Career and Technical Education	June 30, 2019 and 2018	July 7, 2020
Department of Commerce	June 30, 2019 and 2018	October 7, 2020
Department of Corrections and Rehabilitation	June 30, 2019 and 2018	July 7, 2020
Department of Financial Institutions	June 30, 2018 and 2017	July 17, 2019
Department of Human Services	June 30, 2019 and 2018	July 7, 2020
Department of Labor and Human Rights	June 30, 2019 and 2018	November 6, 2019
Department of Public Instruction	June 30, 2019 and 2018	October 7, 2020
Department of Transportation	June 30, 2019 and 2018	October 7, 2020
Department of Trust Lands	June 30, 2018 and 2017	July 17, 2019
Department of Veterans' Affairs	June 30, 2018 and 2017	July 17, 2019
Development Fund, Inc.	June 30, 2018 and 2017	July 17, 2019
Dickinson State University	June 30, 2018	November 6, 2019
Education Standards and Practices Board	June 30, 2017	July 17, 2019
Forest Service	June 30, 2019 and 2018	July 7, 2020
Game and Fish Department	June 30, 2018 and 2017	July 17, 2019
Governor's office	June 30, 2019 and 2018	July 7, 2020
Guaranteed student loan program	September 30, 2018 and 2017	July 17, 2019
Guaranteed student loan program	December 31, 2019 and 2018	July 7, 2020
Highway Patrol	June 30, 2018 and 2017	July 17, 2019
Housing Finance Agency	June 30, 2018 and 2017	July 17, 2019
Housing Finance Agency	June 30, 2019 and 2018	November 6, 2019
Housing incentive fund	June 30, 2018 and 2017	July 17, 2019
Housing incentive fund	June 30, 2019 and 2018	November 6, 2019
Indian Affairs Commission	June 30, 2018 and 2017	July 17, 2019
Industrial Commission	June 30, 2018	November 6, 2019
Information Technology Department	June 30, 2018 and 2017	July 17, 2019
Infrastructure revolving loan fund	June 30, 2018 and 2017	July 17, 2019
Infrastructure revolving loan fund	June 30, 2019 and 2018	November 6, 2019
Insurance Department	June 30, 2019 and 2018	November 6, 2019
Job Service North Dakota	June 30, 2018 and 2017	July 17, 2019
Judicial branch	June 30, 2019 and 2018	July 7, 2020
Lake Region State College	June 30, 2019 and 2018	July 7, 2020
Legislative Assembly	June 30, 2019 and 2018	July 7, 2020
Legislative Council	June 30, 2019 and 2018	July 7, 2020
Mayville State University	June 30, 2019 and 2018	July 7, 2020
Medical facility infrastructure loan fund	June 30, 2018 and 2017	November 6, 2019
Medical facility infrastructure loan program	June 30, 2019 and 2018	July 17, 2019
Medical Imaging and Radiation Therapy Board	June 30, 2017 and 2016	July 17, 2019
Mill and Elevator Association	June 30, 2018 and 2017	July 17, 2019
Mill and Elevator Association	June 30, 2019 and 2018	November 6, 2019
Minot State University	June 30, 2018	November 6, 2019

<b>Agency</b>	<b>Audit Report Date</b>	<b>Meeting Date Accepted</b>
Minot State University emergency preparedness	March 17, 2020	July 7, 2020
NDSUS Division of Workforce Affairs performance audit	March 26, 2019	July 17, 2019
NDSU Parking and Transportation Services Department performance audit followup report	February 27, 2019	July 17, 2019
North Dakota Agricultural Experiment Station, NDSU Extension Service, and Northern Crops Institute	June 30, 2019 and 2018	July 7, 2020
North Dakota Barley Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Beef Commission	June 30, 2018 and 2017	July 17, 2019
North Dakota Beef Commission	June 30, 2019 and 2018	November 6, 2019
North Dakota Comprehensive Annual Financial Report	June 30, 2018	July 17, 2019
North Dakota Comprehensive Annual Financial Report	June 30, 2019	July 7, 2020
North Dakota Corn Utilization Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Council on the Arts	June 30, 2019	November 6, 2019
North Dakota Dairy Promotion Commission	June 30, 2018 and 2017	July 17, 2019
North Dakota development fund	December 31, 2019 and 2018	July 7, 2020
North Dakota Dry Bean Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Dry Pea and Lentil Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Ethanol Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Lottery	June 30, 2018 and 2017	July 17, 2019
North Dakota Lottery	June 30, 2019 and 2018	November 6, 2019
North Dakota Milk Marketing Board	June 30, 2018 and 2017	July 17, 2019
North Dakota Oilseed Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Potato Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Racing Commission	June 30, 2019 and 2018	November 6, 2019
North Dakota Real Estate Commission	June 30, 2018	July 17, 2019
North Dakota Soybean Council	June 30, 2018 and 2017	July 17, 2019
North Dakota Soybean Council	June 30, 2019 and 2018	November 6, 2019
North Dakota State College of Science	June 30, 2019 and 2018	July 7, 2020
North Dakota State University	June 30, 2019 and 2018	July 7, 2020
North Dakota Stockmen's Association	December 31, 2019 and 2018	July 7, 2020
North Dakota Stockmen's Association	December 31, 2018 and 2017	July 17, 2019
North Dakota University System Annual Financial Report	June 30, 2019	July 7, 2020
North Dakota University System Annual Financial Report	June 30, 2018	July 17, 2019
North Dakota University System nonresident tuition performance audit	December 2019	July 7, 2020
North Dakota University System office	June 30, 2018 and 2017	November 6, 2019
North Dakota University System online education performance audit	November 9, 2018	July 17, 2019
North Dakota University System open educational resources performance audit	September 4, 2018	July 17, 2019
North Dakota University System purchasing card program audit followup report	March 7, 2019	July 17, 2019
North Dakota Vision Services - School for the Blind	June 30, 2019 and 2018	November 6, 2019
North Dakota Wheat Commission	June 30, 2018 and 2017	July 17, 2019
Office of Administrative Hearings	June 30, 2019 and 2018	November 6, 2019
Office of Management and Budget	June 30, 2019 and 2018	July 7, 2020
PACE fund	June 30, 2018 and 2017	July 17, 2019
PACE fund	June 30, 2019 and 2018	November 6, 2019
Parks and Recreation Department	June 30, 2019 and 2018	October 7, 2020
Protection and Advocacy Project	June 30, 2018 and 2017	July 17, 2019
Public Employees Retirement System	June 30, 2018 and 2017	July 17, 2019
Public Employees Retirement System Schedules of Employer Allocations and Pension Amounts by Employer	June 30, 2018	July 17, 2019
Public Employees Retirement System Schedules of Employer Allocations and OPEB Amounts by Employer	June 30, 2018	July 17, 2019
Public Finance Authority	December 31, 2018 and 2017	July 17, 2019
Public Finance Authority	December 31, 2019 and 2018	July 7, 2020
Public Service Commission	June 30, 2019 and 2018	November 6, 2019
Rebuilders loan program	June 30, 2018 and 2017	July 17, 2019
Rebuilders loan program	June 30, 2019 and 2018	November 6, 2019
Retirement and Investment Office	June 30, 2018 and 2017	July 17, 2019
Retirement and Investment Office - North Dakota Teachers' Fund for Retirement Schedules of Employer Allocations and Pension Amounts by Employer	June 30, 2018	July 17, 2019
School construction assistance revolving loan fund	June 30, 2018 and 2017	July 17, 2019
School construction assistance revolving loan fund	June 30, 2019 and 2018	November 6, 2019
School for the Deaf	June 30, 2019 and 2018	November 6, 2019
Secretary of State	June 30, 2018 and 2017	July 17, 2019

<b>Agency</b>	<b>Audit Report Date</b>	<b>Meeting Date Accepted</b>
Securities Department	June 30, 2018 and 2017	July 17, 2019
Special funds performance audit	December 18, 2018	July 17, 2019
State Auditor's office	June 30, 2019 and 2018	July 7, 2020
State Board of Barber Examiners	August 31, 2018	July 17, 2019
State Board of Dental Examiners	June 30, 2017 and 2016	July 17, 2019
State Board of Dietetic Practice	September 30, 2018	July 17, 2019
State Board of Funeral Service	June 30, 2018 and 2017	July 17, 2019
State Board of Medicine	December 31, 2017	July 17, 2019
State Board of Nursing	June 30, 2018	July 17, 2019
State Board of Physical Therapy	June 30, 2018 and 2017	July 17, 2019
State Board of Professional Soil Classifiers	June 30, 2018	July 17, 2019
State Board of Reflexology	June 30, 2018	July 17, 2019
State Board of Veterinary Medical Examiners	June 30, 2018 and 2017	July 17, 2019
State Building Authority	June 30, 2018 and 2017	July 17, 2019
State Building Authority	June 30, 2019 and 2018	November 6, 2019
State Building Authority	June 30, 2020 and 2019	October 7, 2020
State Department of Health	June 30, 2019 and 2018	July 7, 2020
State Fair Association	September 30, 2018	July 17, 2019
State Fair Association	September 30, 2019 and 2018	July 7, 2020
State Historical Society	June 30, 2018 and 2017	July 17, 2019
State Library	June 30, 2019 and 2018	October 7, 2020
State Seed Department	June 30, 2018 and 2017	July 17, 2019
State Treasurer's office	June 30, 2019 and 2018	July 7, 2020
State Water Commission	June 30, 2019 and 2018	July 7, 2020
Statewide single audit	June 30, 2018 and 2017	July 17, 2019
Student loan trust fund	June 30, 2018 and 2017	July 17, 2019
Student loan trust fund	June 30, 2019 and 2018	November 6, 2019
Tax Commissioner	June 30, 2019 and 2018	July 7, 2020
University of North Dakota	June 30, 2018	November 6, 2019
University of North Dakota continuity of operations planning	March 17, 2020	July 7, 2020
Upper Great Plains Transportation Institute	June 30, 2019 and 2018	October 7, 2020
Valley City State University	June 30, 2019 and 2018	July 7, 2020
Veterans' Home	June 30, 2019 and 2018	July 7, 2020
Williston State College	June 30, 2019 and 2018	July 7, 2020
Workforce Safety and Insurance	June 30, 2018 and 2017	July 17, 2019
Workforce Safety and Insurance	June 30, 2019 and 2018	November 6, 2019

# LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Management delegated to the Legislative Procedure and Arrangements Committee the Legislative Management's authority under North Dakota Century Code Section 54-35-11 to make arrangements for the 2021 legislative session. Legislative rules also are reviewed and updated under this authority. The Legislative Management also delegated to the committee the Legislative Management's:

1. Responsibility under Section 4.1-36-04 to determine when the Agriculture Commissioner must report to the Agriculture Committees on the status of the pesticide container disposal program;
2. Responsibility under Section 4.1-44-04 to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees;
3. Responsibility under Section 46-02-05 to determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws;
4. Responsibility under Section 54-03-20 to make recommendations to adjust legislative compensation amounts;
5. Responsibility under Section 54-03-20 to establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session;
6. Duty under Section 54-03-26 to determine the computer usage fee for legislators, and the authority to establish a policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council;
7. Authority under Section 54-06-26 to establish guidelines for use of state telephones by legislative branch personnel;
8. Power and duty under Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents and to control permanent displays in Memorial Hall and use of the legislative chambers; and
9. Responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce on goals and objectives of the Department of Commerce.

The Legislative Management also assigned to the committee the responsibilities under 2009 Session Laws Chapter 29, § 5, and 2011 Session Laws Chapter 1, § 6, to administer the appropriations for legislative wing equipment and improvements. The Legislative Management designated the committee as the Legislative Ethics Committee under Section 54-35-02.8 with the responsibility to consider or prepare a legislative code of ethics.

Committee members were Senators Rich Wardner (Chairman), John Grabinger, Joan Heckaman, Jerry Klein, and Oley Larsen and Representatives Josh Boschee, Karla Rose Hanson, Lawrence R. Klemin, Scott Louser, and Chet Pollert.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## LEGISLATIVE SPACE AND CAPITOL FACILITIES IMPROVEMENTS Legislative Chambers and Memorial Hall

Since 1981 the Legislative Management has delegated to the committee the responsibility under Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee adopted guidelines for use of the legislative chambers and displays in Memorial Hall. During this interim, the committee approved requests for use of both chambers and legislative committee rooms by the North Dakota High School Activities Association State Student Congress on November 5-6, 2020, and November 4-5, 2021. The committee also approved a request from the Supreme Court to use the House Chamber while the Supreme Court offices were being renovated, provided the Legislative Assembly did not need the chamber for a special session. The Supreme Court did not use the chamber because it suspended some activities and held remote hearings during the relevant part of the Coronavirus (COVID-19) pandemic. The committee also approved the display of tribal flags outside the Governor's office as a permanent display and authorized a stand with informational pamphlets to be placed next to the flags.

The committee approved repurposing a security kiosk into a new information kiosk in Memorial Hall. The security kiosk had been located outside the Governor's office but was no longer in use. The former information kiosk, which sat

in the middle of Memorial Hall, was no longer sturdy and blocked the view down Memorial Hall and Legislative Assembly Hall. The committee approved removing the former information kiosk and relocating the security kiosk along the north wall of Memorial Hall to the west of the main stairs to serve as the new information kiosk.

### **Legislative Committee Rooms**

Joint Rule 804 provides during a legislative session committee rooms may be used only for functions and activities of the legislative branch, but the Secretary of the Senate or the Chief Clerk of the House may grant a state agency permission to use a room at times and under conditions not interfering with the use of the room by the legislative branch. With respect to use during the interim, Section 48-08-04 applies and provides committee rooms may not be used without authorization of the Legislative Council. The Legislative Management adopted the policy governing approval of use of committee rooms in 1998, and the committee has revised the policy as necessary to address issues that have arisen. The policy also applies to use of the legislative media room on the ground floor of the legislative wing whether during the session or during the interim. The policy is similar to that governing use of the chambers.

The committee discussed the need for additional, large committee rooms and work space for legislators and session employees to accommodate social distancing due to COVID-19. The committee was informed several parts of the Capitol complex have been vacated by executive branch agencies due to increased telecommuting during the pandemic. The committee was informed the Legislative Council worked with executive branch agencies to acquire additional space for the 2021 legislative session.

### **Other Areas in the Capitol Complex**

The committee received information regarding the renovation of the south entrance to the Capitol. The committee was informed J2 Studio, a Bismarck architecture and design firm, was chosen to design the new entrance, and the renovations are intended to improve access to the Capitol. The committee received testimony the bids for redesigning the entrance came in under the architect's expectations, and work on the project was ahead of schedule. Testimony indicated the project will be completed before the beginning of the 2021 legislative session.

The committee received information the Associated Press no longer wished to have responsibility for managing the media room in the Capitol. The committee considered a bill draft amending Section 48-08-03 giving the North Dakota Newspaper Association and North Dakota Broadcasters Association joint responsibility for the room. Committee discussion emphasized access to the media room should be limited to statehouse correspondents and should not be used as free office space for other correspondents.

### **Accessibility Upgrades**

The committee received testimony from a representative of the Office of Management and Budget (OMB) regarding renovations required to bring committee rooms and other parts of the Capitol into compliance with the federal Americans with Disabilities Act of 1990 (ADA). Testimony indicated OMB completed a study of the Capitol's compliance with the ADA in January 2020. The committee was informed it would cost approximately \$6,000 to increase the width of each committee room door to the ADA-required width and \$3,000 to add assistive listening devices to each committee room. Testimony indicated OMB was completing ADA-required upgrades costing less than \$500 during the interim and would request funds for the remaining upgrades in its budget request to the 67<sup>th</sup> Legislative Assembly.

### **Recommendations**

The committee recommends [House Bill No. 1039](#) to give the North Dakota Newspaper Association and the North Dakota Broadcasters Association joint responsibility for the Capitol media room.

## **LEGISLATIVE ETHICS COMMITTEE AND CODE OF ETHICS**

Section 54-35-02.8 requires the Legislative Management to appoint an ethics committee to consider or prepare a legislative code of ethics. Since 1995, the Legislative Management has appointed the Legislative Management (now Legislative Procedure and Arrangements) Committee as the Legislative Ethics Committee. During the 1995-96 interim, the Legislative Management Committee reviewed North Dakota laws affecting legislative ethics. That committee recommended legislative rules declaring a legislative ethics policy urging members to maintain ethical standards and recognize the importance of standards contained in the rules, urging members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and requiring the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Assembly adopted those rules as Joint Rules 1001 through 1004. The committee makes no recommendation regarding changes to the legislative code of ethics.



## **LEGISLATIVE RULES AND PREPARATIONS RESPONDING TO COVID-19**

The committee continued its tradition of reviewing and updating legislative rules. The committee recommends amendments to several rules. The committee recommends amending House Rule 362 and Senate Rule 362 to update the references to technology in the rules and prohibit individuals other than members of the media from making calls and recording and transmitting audio or video from the chamber floors and committee rooms. In response to issues arising in the 2019 session, the committee also recommends amending Senate Rules 320 and 348 and House Rule 348 to clarify when a roll call vote is required for a motion for reconsideration.

In preparation for a legislative session during the COVID-19 pandemic, the committee received information on the constitutionality of remote participation in legislative floor sessions, votes, and committee hearings, and public meetings requirements. The committee was informed of other states' use of remote sessions and related court opinions. The committee expressed an intention any special session held in 2020 and the 2021 legislative session would be in-person with the option for individual legislators and the public to participate remotely. The committee recommends amending House Rule 329, Senate Rule 329, and Joint Rules 501 and 502 to remove requirements for fiscal notes to be attached physically to bill drafts or distributed in hard copy, and amending House Rules 102, 201, 303, 305, 321, 360, and 361; Senate Rules 102, 201, 303, 305, 321, 360, and 361; and Joint Rule 801 to permit remote participation by members of the Legislative Assembly in floor sessions and committee meetings, remote testimony in committee hearings, and limitations on the number of individuals allowed in the chambers.

## **LEGISLATIVE INFORMATION SERVICES**

Beginning with the 1985-86 interim, the committee has reviewed the cost of providing various printed documents to persons outside the legislative branch. Subscription fees have been established which approximate the cost of printing a set of the relevant documents during the previous legislative session. Representatives of the media, as determined under Joint Rule 803, and state agencies and institutions are not charged the fees for copies of bills and resolutions, daily journals, daily calendars, and committee hearing schedules. All of these documents are available on the legislative branch website. The committee emphasized state agencies and institutions are expected to obtain the documents through the legislative branch website.

### **Bills, Resolutions, and Journals Subscription**

During the 2019 legislative session, 13 entities paid to receive a set of bills and resolutions from the bill and journal room, 3 entities paid to receive a set of journals, and 1 entity paid to receive the journal index. The committee established the following fees with respect to these documents during the 2021 legislative session--\$460 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions; \$380 for a set of daily journals of the Senate and House; and \$90 for the permanent index to the Senate and House journals. The number of subscribers has been decreasing, likely because all the documents are available on the legislative branch website. The committee continued the policy provided under Joint Rule 603 that a person may not receive more than five copies of a limited number of bills and resolutions without charge. The committee also reduced the number of copies of bills and resolutions and daily journals to be printed due to the number of those documents remaining at the end of the 2017 and 2019 legislative sessions and because the legislative employees are able to print additional documents upon demand. The reduction in the number of bills and resolutions and daily journals requested was attributed largely to the availability of documents online, and the use of the legislative bill tracking service and the *North Dakota Legislative Daily* application.

### **Bill Status Report Subscription**

The printed version of the bill status system provides information on the progress of bills and resolutions, the sponsors of measures, and an index to the subject matter of measures. No one paid the \$565 subscription fee to receive the reports in 2017 or the \$550 subscription fee to receive the reports in 2019. The committee determined five printed bill status reports should continue to be made available through the bill and journal room to those who pay a \$560 subscription fee.

### **Committee Hearing Schedules and Daily Calendars Subscription**

The committee continued the practice of making committee hearing schedules and daily calendars available at no charge.

### **Bill and Journal Room Photocopy Policy**

During previous legislative sessions, the contract for providing secretarial, telephone message, and bill and journal room services provided for the contractor to collect photocopying fees and transmit those fees to the Legislative Council office. Fees are not charged for providing a photocopy of a legislative document available for distribution to the public by personnel in the bill and journal room (bills, journals, calendars, and committee hearing schedules) nor for providing a photocopy to a legislator, a House or Senate employee, or a Legislative Council employee. Under the policy, the fee for photocopying service was 25 cents per page. Although the committee decided the Legislative

Assembly should not contract for bill and journal room services for the 2021 legislative session, the bill and journal room policy was adopted by the committee.

### **Incoming WATS Line Service**

Beginning with the 1985 legislative session, incoming WATS lines have been provided for residents in the state to contact legislators or obtain information concerning legislative proposals. If all lines are in use or the call is made after regular business hours, a caller is given two options--one for staying on the line (if the call is during regular business hours) and one for leaving a message for legislators from the caller's district. This message feature is available 24 hours a day, 7 days a week during regular legislative sessions. It has been the policy to allow a caller to leave a message for the caller's local legislators (legislators from the caller's district and legislators of the city of the caller) and for specifically named legislators identified by the caller. The committee made no changes regarding the incoming WATS line telephone message service for the 67<sup>th</sup> Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

## **LEGISLATIVE COMPENSATION**

### **Legislative Compensation Review**

In 2011 the Legislative Assembly repealed the law providing for a Legislative Compensation Commission and amended Section 54-03-20 to provide the Legislative Management is to make recommendations and submit any necessary legislation to adjust legislative compensation amounts. The committee received information on legislative compensation and expenses, the process for adjusting compensation, legislative compensation increases compared to inflation and state employee salary increases, and legislative compensation levels in other states.

The committee recommended the 2021-23 biennium budget of the Legislative Assembly include funding for changes to legislative compensation to provide for adjustments of 1 percent in each year of the 2021-23 biennium, subject to revision if necessary during the 2021 legislative session to equal the percentage changes provided for state employee salary increases, and the necessary related statutory changes.

### **Legislator Expense Reimbursement Policy**

Section 26 of Article XI of the Constitution of North Dakota provides payment for necessary expenses of legislators may not exceed that allowed for other state employees. Section 54-03-20 provides the maximum lodging reimbursement for legislators during a regular legislative session may not exceed 30 times 70 percent of the daily lodging reimbursement for state employees and officials. Under that formula, legislators may receive up to \$1,814 per month as reimbursement for lodging for the 2021 legislative session.

The committee made no changes to the legislative expense reimbursement policy that was in place for the previous four legislative sessions--reimbursable lodging expenses during a legislative session include utilities (electricity, heat, and water, including garbage collection and sewer charges), basic telephone service and telephone installation charges, snow removal expense, and furniture (rental of furniture and appliances and transit charges for moving rental furniture and appliances). In addition, the lodging expense reimbursement of two or more legislators sharing housing in a single dwelling is subject to approval by the Chairman of the Legislative Management, in accordance with Section 54-03-20.

## **LEGISLATIVE INFORMATION TECHNOLOGY**

### **Personal Computer Use Policy**

The committee reviewed the *Policy on Use of Personal Computers by Legislators*. The policy describes statutory restrictions on use of personal computers and governs use of state-owned personal computers and use of privately owned personal computers to access legislative information systems. The policy also addresses the use of tablet computers, provides for copying of legislator information to replacement computers, includes a procedure on purchase of old computers, and authorizes a fee for acquiring a replaced computer and a computer assistance fee. The committee approved the policy with the addition of a definition of "legislative information systems."

### **Information Technology Initiatives**

#### **Video of Committee Meetings and Other Measures Responding to COVID-19**

The committee discussed the use of social media by members of the Legislative Assembly to record or livestream committee meetings. The committee discussed balancing the need for transparency and public access with members' need to concentrate on matters raised during committee meetings. In September 2019, the committee approved a pilot project to implement video recording by the Legislative Council of committee meetings in the Roughrider and Harvest Rooms. In December 2019, the committee approved acquiring high-definition digital cameras for committee rooms and including closed captioning, indexing, archiving, and search functions in the pilot project.

In response to the COVID-19 pandemic, the committee discussed methods for providing safe public access to committee meetings and safely conducting a possible special session in 2020 and the 2021 legislative session. The committee expressed the need to ensure the public and members of the Legislative Assembly who choose to do so will be able to participate remotely in a special session and the 2021 session. The committee directed the Legislative Council to install the necessary equipment in the legislative chambers and committee rooms to provide livestreams of committee meetings and floor sessions, permit remote participation by legislators and presenters in committee meetings, provide for remote testimony by members of the public during the session, and allow legislators to participate and vote in floor sessions remotely. The Legislative Council installed the necessary audiovisual equipment, upgraded the voting boards in the legislative chambers to display remote attendees, provided a remote voting system, developed an electronic bill draft request system and an electronic bill sponsor system, installed additional cybersecurity measures, and established a system for the public to submit electronic testimony. A portion of the costs of the purchase and installation of equipment for livestreaming was paid utilizing federal funds provided in response to the pandemic.

### **Digital Projectors**

The committee was informed the projectors in legislative committee rooms were analog and incompatible with some technology used during committee meetings. The committee approved upgrading the projectors to digital.

### **Wall Monitors and Digital Signage**

The committee was informed the wall monitors with information about committee meetings and other legislative matters will be updated after the 2021 legislative session.

### **Cybersecurity Awareness**

The committee received reports regarding online cybersecurity awareness training for legislators. The Majority and Minority Leaders agreed to contact caucus members to encourage legislators to complete the annual training. The committee also approved including cybersecurity awareness training in the mandatory training sessions before new legislators are issued laptops and tablets. The committee received information that use of personal computers by legislators is strongly discouraged and should be prohibited for remote participation in legislative activities.

### **Scanned Testimony**

During the 2017 legislative session, a pilot project was conducted in which interns for two standing committees scanned testimony and placed the testimony in an electronic folder that could be accessed by committee members. Although members of the committees generally found the electronic testimony to be useful, it was suggested placing the testimony in the Legislator's Automated Work Station (LAWS) system would be more useful in allowing all legislators to review the testimony when considering bills on the floor. During the 2017-18 interim, the committee approved an expanded electronic scanning pilot project, including enhancing the LAWS system to include electronic testimony for the 2019 legislative session. The committee was informed the expanded project went well, and all committees will have testimony scanned into LAWS for the 2021 legislative session.

### **Computer Replacement**

The committee received recommendations for laptop computer and tablet replacements for members of the Legislative Assembly which the committee approved. The new laptop computers will be EliteBook 850G6, and the new tablets will be 4<sup>th</sup> generation iPad Pro 12.9. The *Policy on Use of Personal Computers by Legislators* includes a provision allowing legislators who have paid a usage fee to purchase the replaced computers and tablets. The committee set the fee for purchase of the laptops and iPads at \$200 per device.

### **Legislator Data Plan Reimbursement**

Before November 1, 2012, legislators received reimbursement for their mobile data plans two ways. The method for non-Verizon users required legislators to submit a voucher at least quarterly to the Legislative Council. The method for Verizon users required legislators to participate in split billing--a legislator's data costs associated with the legislator's plan were billed separately to the state of North Dakota. During the 2011-12 interim, the committee approved a new method of reimbursing legislators for their data plans effective November 1, 2012. All participating legislators were required to submit a request form for reimbursement of their mobile data costs to the Legislative Council, identifying data costs associated with legislative business, along with a copy of their wireless carrier bill identifying the mobile data costs. The Legislative Council provided monthly reimbursement at that level until the legislator incurred a change in mobile data cost, contract, or vendor. At such time, the legislator was to submit a new request form to the Legislative Council for reimbursement of the legislator's mobile data costs, identifying data costs associated with legislative business, along with a new copy of the wireless carrier bill showing new mobile data costs. During the 2013-14 interim, the committee reviewed the effects of the November 2012 policy. This method of reimbursement was found to have its own problems. Plan configurations and options, as well as devices, change so frequently that legislators may not have selected the most cost-effective or friendly plan. In addition, constantly revising the policy to address every variation of plan configurations was not viewed as feasible. The committee approved discontinuance of the November 2012 policy

and approved a \$90 per month information technology stipend for legislators who sign an agreement to use the stipend for technology-related costs. The policy eliminated the need for split billing and state involvement with reimbursements. The committee recognized a stipend would be included in a member's taxable income, but broadband and mobile data expenses are deductible expenses and this should be a wash for a member.

The committee made no changes to the data plan reimbursement policy.

### **Legislator Computer Training**

The tentative organizational session agenda approved by the committee continues the computer training classes for returning legislators beginning at 9:00 a.m. on Tuesday, December 1, 2020. The agenda also provides for a computer distribution and training session for new legislators at 3:15 p.m. on Tuesday, December 1, 2020, in addition to the traditional training sessions for new legislators on Thursday, December 3, 2020. The agenda also includes laptop computer and tablet training sessions on Wednesday and Thursday, December 2-3, 2020, for returning legislators. The training sessions for new legislators include training related to cybersecurity awareness.

## **SESSION ARRANGEMENTS**

### **Doctor of the Day Program**

The committee accepted an offer by the North Dakota Medical Association to continue the doctor of the day program during the 2021 legislative session under the same arrangements as in the past. The association is planning to rely on physicians and residents from around the state to volunteer for the program and provide basic health care services and referrals during the legislative session.

### **Legislator Wellness Program**

Section 54-52.1-14 requires the Public Employees Retirement System (PERS) Board to develop an employer-based wellness program encouraging employers to adopt a board-approved program. The incentive for adoption of a program is a 1 percent of health insurance premium charge to agencies that do not participate in the program. A wellness program must include the "mandatory activity" of communicating wellness materials provided by PERS and Sanford Health to individual employees on a monthly basis and promoting the PERS smoking cessation program to employees. In addition to this mandatory activity, different "optional" activities must be developed each year. The comprehensive health assessment will be continued during the 2021 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during previous legislative sessions.

### **Stationery**

Before 2013 every legislator had been given the option of receiving 250 sheets of regular (8.5 inches by 11 inches) or Monarch (7.5 inches by 10.5 inches) stationery and envelopes, 250 sheets of each type of stationery and envelopes, 500 sheets of either type of stationery and envelopes, or 250 or 500 envelopes. A legislator also was allowed to request an additional 500 sheets of stationery and 500 envelopes, up to 1,000 sheets and envelopes total. The Speaker, each leader, and each assistant leader were entitled to as much regular and Monarch stationery as needed. In addition, an electronic letterhead was provided to all legislators to use as a template to print correspondence on regular paper and envelopes. That policy was changed for the 2013 legislative session. In 2012 the committee determined legislators should be provided with an electronic letterhead for use in printing letters and envelopes rather than receive stationery and envelopes through a contract printer. Because computers are provided to all legislators, the committee concluded there was little need for continuing to provide individualized stationery and envelopes when templates are provided for legislators to use through software on their computers. The committee approved continuation of the policy of providing electronic letterhead for use in printing letters and envelopes.

### **Legislator Photographs**

The committee approved the invitation to bid for photography services to the 67<sup>th</sup> Legislative Assembly. The invitation to bid contained generally the same specifications as the contract for the 66<sup>th</sup> Legislative Assembly. The photographs of legislators are to be taken during the organizational session in 2020, and the photographs of the six elected legislative officers are to be taken during the 2<sup>nd</sup> week of the regular session. The photographer is to provide the digital image of the pose selected by each legislator to the Legislative Council by Friday, December 18, 2020, for use in updating the legislative branch website, and the photographer is to provide the digital image of the pose selected by each elected legislative officer and of any legislator who chose to have a retake to the Legislative Council by Wednesday, January 20, 2021. The invitation to bid was sent to 300 photography firms in the state. Six photographers submitted bids, two of which did not comply with the bid requirement to provide sample photographs. The conforming bids were Lostwood Media, Stanley, \$4,000 and \$23 for each additional 11x14 frame; Aizzah Nelson, Dickinson, \$4,500 and \$15 for each additional 11x14 frame; Dakota College at Bottineau Photography, \$4,598 and \$35 for each additional 11x14 frame; and Owolabi Banjoko, Fargo, \$6,500. The committee accepted the bid from Lostwood Media.

### **Session Employee Positions**

The committee reviewed the number of employee positions during the 2019 legislative session and historical changes in legislative employee positions since 1993. The 1993 legislative session was used as a base session because legislative employment peaked during that session, with 59 Senate employees and 77 House employees. During the 2017-18 interim, the committee recommended a total of 83 session employees--37 Senate employees and 46 House employees, and the numbers of employees actually hired for the session matched the recommended numbers. The committee reviewed and approved a legislative session employee position plan that proposed maintaining the same legislative employee positions during the 2021 legislative session. The plan:

- Continued the four staff assistants authorized for the Majority Leaders and the four staff assistants authorized for the Minority Leaders.
- Continued employment of a parking lot attendant by each house.
- Continued employment of the supply room coordinator by the Senate.
- Continued employment of the number of assistant sergeants-at-arms at the 2019 level.
- Continued employment of the number of assistant committee clerks at the 2019 level.

Committee discussion emphasized the duties of session employees may vary from previous sessions due to the acceptance of remote testimony, remote participation of some legislators, and livestreaming of committee hearings. Committee clerks will need to have sufficient technical skills to manage the new audiovisual equipment. The committee approved having clerks prepare truncated minutes of hearings in light of the video recordings that will be livestreamed and available for review. Sergeants-at-arms may be required to limit the number of individuals in the chambers due to social distancing requirements resulting from the COVID-19 pandemic. Because the committee did not recommend contracting with a company to provide bill and journal room services or secretarial services, some legislative employees will need to provide those services when not otherwise occupied.

### **Session Employee Compensation**

The committee reviewed legislative session employee compensation levels during the 2019 legislative session. The committee received information indicating session employee compensation increases in recent sessions were reflective of average pay increases authorized for state employees. Because state employees were not authorized salary increases in 2017 and 2018, the committee did not approve general increases for session employees for the 2019 legislative session. The compensation of the Secretary of the Senate and the Chief Clerk of the House were increased by \$5 per day because those positions have the responsibility of supervising session employees and the positions were paid only \$5 per day more than the next highest paid positions. The committee recommends raises consistent with state employee compensation increases of 2 percent for the 1<sup>st</sup> year of the 2019-21 biennium and 2.5 percent for the 2<sup>nd</sup> year of the biennium.

The committee recommends the concurrent resolution establishing employee positions continue the practice of not including specific names or identifying specific individuals. This type of resolution was first adopted in 1997 as a means to provide flexibility in the hiring of employees after adoption of the concurrent resolution. By designating positions and compensation levels, and not naming employees, an employment committee report that names an employee and designates the position is sufficient to identify that employee, the position, and the compensation level. The committee also recommends the concurrent resolution continue to refer to the generic position of "legislative assistant" in place of employees formerly classified as assistant sergeant-at-arms, supply room coordinator, desk page, page and bill book clerk, information kiosk attendant, and parking lot attendant; continue to include provisions authorizing conversion of full-time positions to part-time positions; and continue to authorize the leaders to consolidate staff assistant positions.

### **Session Employee Orientation and Training**

The Legislative Council staff will provide the orientation and training of legislative session employees. The training will be similar to that provided before the 2019 legislative session, although some employees will be cross-trained on multiple positions and some employees will receive training on new technology to facilitate remote testimony, remote participation in floor sessions and committee hearings, and other changes intended to reduce transmission of COVID-19. Most employees needing specialized training will receive training in December.

### **Secretarial, Telephone Message, and Bill and Journal Room Services**

#### **Secretarial Services**

In 1993 the joint secretarial pool consisted of the equivalent of 10.5 stenographers and typists and each house employed a chief stenographer and payroll clerk. Beginning with the 1995 legislative session, the Legislative Assembly has contracted with a third party to provide secretarial services. Beginning with the 2013 legislative session, the Legislative Council staff assumed the responsibility for handling payroll for the Legislative Assembly.

### **Telephone Message Services**

In 1999 the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages. Beginning with the 2001 legislative session, the Legislative Assembly has contracted with a third party to provide telephone message services.

### **Bill and Journal Room Services**

In 1995 the Legislative Assembly employed 12 bill and journal room clerks. Beginning with the 1997 legislative session, the Legislative Assembly has contracted with a third party to provide bill and journal room services.

### **Consolidated Services**

Beginning with the 2001 legislative session, secretarial services and telephone message services were provided by the same contractor. Beginning with the 2003 legislative session, secretarial, telephone message, and bill and journal room services have been provided by one third-party contractor. Since the first contract with a third party to provide services formerly provided by Legislative Assembly employees, the committee has reviewed workload to ensure appropriate levels of service. As a result of the decreasing number of documents prepared and the decreasing number of telephone calls received during recent legislative sessions, as well as recommendations of the third-party contractors to allow for cross-training of employees so they can be assigned among the areas as needed, the number of employees under contract to provide secretarial, telephone message, and bill and journal room services has been reduced as appropriate to meet workload. Beginning with the 2015 legislative session, the secretarial and telephone message and the bill and journal room services were collocated in the bill and journal room.

The demand for secretarial services has diminished significantly due to the use of word processing and email, and the need to distribute hard copy documents to the public has diminished significantly due to widely available electronic access to legislative documents. The responsibilities of some legislative employees such as pages also have been reduced due to advances in technology. The committee recommended discontinuing the practice of contracting with a third party for secretarial, telephone, and bill and journal room services and instead having legislative employees fulfill the remaining need for those services.

### **Legislative Internship Program**

Since 1969 the Legislative Assembly has sponsored a legislative internship program. During recent legislative sessions, the program has provided the Legislative Assembly with the assistance of law school students for a variety of tasks, especially the preparation of amendments, and has provided the students with a valuable educational experience. Although assigned to committees, the interns are supervised by the Legislative Council staff. Since the beginning of the program, each intern has received a stipend as a means of covering the expense of participating in the program. The committee approved continuation of the program for the 67<sup>th</sup> Legislative Assembly, with at least 10 intern positions allocated to the University of North Dakota School of Law for assignment to the 3-day and 2-day standing committees and one student assigned to work with the Legislative Council fiscal staff. The committee authorized the Legislative Council to work with representatives of the School of Law to develop an approved reimbursement policy, with a maximum reimbursement of \$3,500 per month for the 4-month program.

### **Legislative Tour Guide Program**

During the past 22 legislative sessions, the Legislative Council has operated a tour guide program that coordinates tours of the Legislative Assembly by high school groups. The tour guide program is used extensively by high school groups; however, upon request, other groups have been placed on the tour schedule. The committee approved the continuation of the tour guide program for the 2021 legislative session. However, due to the COVID-19 pandemic and anticipated lack of tour groups at the Capitol, the tour guide program will be suspended.

### **Chaplaincy Program**

The Bismarck-Mandan Ministerial Association has coordinated the scheduling of a chaplain in each house to open the daily session with a prayer. Each chaplain receives a daily stipend of \$25. The committee authorized the Legislative Council staff to invite the local ministerial associations to continue to schedule chaplains for opening prayers for both houses each day of the 2021 legislative session. The Legislative Council staff will notify all legislators they have until December 31, 2020, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2021 legislative session.

### **Organizational Session Agenda**

The committee approved a tentative agenda for the 2020 organizational session. The 2020 organizational session will convene at 1:00 p.m. on Tuesday, December 1, 2020. The 2020 agenda continues the provision of orientation classes for freshman legislators and computer training classes for returning legislators beginning at 9:00 a.m. on December 1. In 2017, the committee first approved including cybersecurity awareness training as part of the computer training sessions for new legislators and including training related to the *North Dakota Legislative Assembly Policy Against Workplace Harassment* as part of the 2018 organizational session ethics presentation. These training topics

are included in the 2020 tentative agenda. The agenda also includes a computer distribution and training session for new legislators at 3:15 p.m. on Tuesday and additional computer distribution and training sessions on Wednesday and Thursday.

The committee approved changes in the tentative agenda for the 1<sup>st</sup> day of the organizational session to allow the rules committees to meet before the convening of the organizational session, and the House of Representatives and the Senate to vote on their rules during the 1:00 p.m. session that day. Committee discussion indicated the rules committees may need more time than usual to address the several rules amendments recommended by the committee to allow for remote participation and other changes due to the COVID-19 pandemic.

### **State of the State Address**

During the 2019 legislative session, the House and Senate convened in joint session at 1:00 p.m. on the 1<sup>st</sup> legislative day. Three escort committees were appointed--one for the Lieutenant Governor, one for the Chief Justice of the Supreme Court, and one for the Governor and First Lady. After the Chief Justice administered the oath of office to elected officials of the executive and judicial branches, the Governor presented the State of the State address. The committee authorized the Legislative Council staff to contact the Governor for presentation of the State of the State address on the 1<sup>st</sup> legislative day of the 2021 legislative session.

### **State of the Judiciary Address**

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the Supreme Court for the State of the Judiciary address to be held at 11:00 a.m. on the 1<sup>st</sup> legislative day.

### **Tribal-State Relationship Message**

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to address the 67<sup>th</sup> Legislative Assembly at 10:00 a.m. on the 1<sup>st</sup> legislative day.

### **Agricultural Commodity Promotion Groups Report**

The committee reviewed Section 4.1-44-04, which requires 14 agricultural commodity promotion groups to file a uniform report at a public hearing before the standing Agriculture Committee of each house. The committee designated Thursday, January 14, 2021, as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

### **Agriculture Commissioner Report**

The committee reviewed Section 4.1-36-04, which requires the Agriculture Commissioner to submit a biennial report to a joint meeting of the House and Senate Agriculture Committees on the status of the pesticide container disposal program. The committee determined the report should be made on the same day the committees receive the agricultural commodity promotion groups report--Thursday, January 14, 2021.

### **Commissioner of Commerce Report**

The committee reviewed Section 54-60-03, which requires the Commissioner of Commerce to report on the Department of Commerce's goals, objectives, and activities to a standing committee of each house as determined by the Legislative Management. The committee determined the report should be made to the Industry, Business and Labor Committees on Wednesday, January 13, 2021.

### **TELEPHONE USAGE GUIDELINES**

Under Section 54-06-26, a state official or employee may use a state telephone to receive or place a local call for essential personal purposes to the extent use does not interfere with the functions of the official's or employee's agency. When a state official or employee is away from the official's or employee's residence for official state business and long-distance tolls would apply to a call to the city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. A state agency may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

The committee makes no recommendation for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

# LEGISLATIVE REVENUE ADVISORY COMMITTEE

After the 2017 legislative session, the Legislative Management appointed a legislative revenue advisory committee and assigned the committee the responsibility to study state revenues and state revenue forecasts during the 2017-18 interim. The Legislative Management appointed a committee for the 2019-20 interim to continue studying state revenues and state revenue forecasts. The committee consists of the Majority and Minority Leaders of the House and Senate, the chairmen of the House and Senate Appropriations Committees, one member appointed by the House Majority Leader, and one member appointed by the Senate Majority Leader. The committee's duties include monitoring state revenues and state economic activity, reviewing economic forecasting data and models, and reviewing and analyzing executive revenue forecasts and alternative revenue forecasts.

Committee members were Senators Ray Holmberg (Chairman), Dwight Cook, Joan Heckaman, and Rich Wardner and Representatives Josh Boschee, Jeff Delzer, Lawrence R. Klemin, and Chet Pollert.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## REVENUE FORECASTING AND ADJUSTMENTS

### Revenue Forecasting Process

The committee reviewed the revenue forecasting process, including the responsibilities of the Legislative Assembly and the Office of Management and Budget (OMB). During the interim, the Legislative Revenue Advisory Committee meets to study state revenues and state revenue forecasts. Industry representatives provide information on economic trends, and the committee receives information on revenue collections from state agencies and forecasting data from an economic forecasting consultant. The consultant provides preliminary revenue forecasting information to the committee in September before the start of the regular legislative session.

The Legislative Assembly is responsible for approving the state budget. During the legislative session, the Appropriations Committees receive revenue forecasting information from the economic forecasting consultant. The Appropriations Committees adopt the initial base revenue forecast in January and revisions to the base revenue forecast in March based on economic conditions and forecasting information from the consultant and OMB. The legislative revenue forecast prepared at the end of each session is the official revenue forecast for the biennium until the Legislative Assembly revises the forecast, generally during the next legislative session.

Similar to the legislative process, OMB prepares revenue forecasts for consideration in developing the state budget. Currently, OMB contracts with Moody's Analytics to provide economic projections as a basis for the revenue forecasts. In coordination with the Tax Department, OMB uses the economic projections from Moody's Analytics along with historical tax collection data to forecast general fund tax revenues. These forecasts are presented to the Legislative Assembly during the organizational session in December as part of the executive budget with an update in March during the legislative session.

### 2015-17 Biennium Revenue Adjustments

After the development of the December 2014 executive budget revenue forecast, oil prices and oil activity decreased significantly. As a result, the 2015 Legislative Assembly adopted revenue adjustments during the legislative session to reduce the estimated general fund revenues and oil and gas tax revenues.

Due to the decrease in oil activity, the actual 2015-17 biennium general fund revenue collections were less than forecasted. In February 2016, OMB released a revised revenue forecast resulting in a transfer from the budget stabilization fund and reductions to agency budgets.

The Governor ordered a special legislative session in August 2016 to address additional budget challenges. The Legislative Assembly provided transfers from the budget stabilization fund and Bank of North Dakota profits to the general fund, reduced agency budgets, and recognized 2015-17 biennium unspent general fund appropriation authority to balance the general fund budget. An increase in oil activity allowed the Legislative Assembly to recognize an increase in the forecast for oil and gas tax revenues.

### 2017-19 Biennium Revenue Adjustments

The 2017 Legislative Assembly adopted a base revenue forecast in January 2017, which was lower than the December 2016 executive budget revenue forecast, to reflect current economic conditions. In March 2017, the



Appropriations Committees adopted a revised revenue forecast prepared by OMB with an additional reduction to the 2017-19 beginning balance related to lower sales and use tax collections in the 2015-17 biennium.

During the 2017-18 interim, the Legislative Management appointed a Legislative Revenue Advisory Committee to study state revenues. The committee received information on economic trends from industry representatives, information on revenue collections from state agencies, and forecasting data from a consultant. The committee selected IHS Markit to provide consulting services. The committee did not make a recommendation regarding the study of state revenues; however, IHS Markit provided additional updates to the Appropriations Committees during the 2019 legislative session to assist the committees in the development of the state budget for the 2019-21 biennium.

### **2019 Legislative Session Revenue Adjustments**

The Appropriations Committees adopted a base revenue forecast in January 2019, which reflected the average of the December 2018 executive revenue forecast and January 2019 estimates prepared by IHS Markit. In March 2019, OMB presented revisions to the executive revenue forecast, and IHS Markit presented an updated report reflecting revised revenue estimates. The Appropriations Committees adopted adjustments to the January 2019 base revenue forecast using the information received from both OMB and IHS Markit.

## **STATE REVENUES AND STATE REVENUE FORECASTS STUDY**

The committee received information on economic trends, including a short-term outlook from industry representatives and revenue collections from state agencies. The committee also received information from a consultant regarding state revenue forecasts.

### **Information from Industry Representatives**

The committee received information in August 2020 from the North Dakota Petroleum Council regarding the status of the oil and gas industry. Oil and gas activity was slowly recovering from the Coronavirus (COVID-19) pandemic and oil price decline earlier in 2020. Some oil drilling activity increased as operators worked to secure federal leases ahead of the election in November 2020. The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding used by the Department of Mineral Resources to plug and remediate abandoned oil wells allowed oil companies to keep some oil field workers employed while the industry experienced a decrease in activity.

The committee received information from the North Dakota Stockmen's Association, the North Dakota Wheat Commission, and the North Dakota Soybean Council regarding the status of the agriculture industry. Recent international trading agreements increased cattle prices by 15 percent. However, the COVID-19 pandemic decreased the demand for beef while restaurants were closed and processing facilities were temporarily shutdown. Demand for North Dakota's quality wheat increased during the COVID-19 pandemic as more consumers were baking at home. Drought conditions in 2019 decreased wheat production but government payments and insurance assisted farmers to pay expenses. Soybean exports slowly increased after the significant decrease in 2018 related to the trade dispute with China. Concerns from the agriculture industry included a lack of processing facilities in North Dakota, weather conditions, pasture quality, and other supply chain issues.

The North Dakota Retail Association and the Associated General Contractors of North Dakota provided information to the committee regarding other industry trends. Some retail sales increased during the COVID-19 pandemic as shoppers purchased essential items, but restocking was a challenge as transportation slowed and manufacturers reduced output. Thefts increased by 25 percent with larger retailers experiencing theft-related losses in excess of \$500,000. The closure of the Canadian border due to the COVID-19 pandemic impacted small retailers more than large retailers because large retailers benefited from an increase in online sales. Concerns from retailers include changes in consumer shopping patterns as online sales increase and the impact on physical stores. Construction in the spring and summer of 2020 remained steady even during the COVID-19 pandemic. Favorable weather, slower business activity, and fewer commuters allowed construction activity to start earlier in the spring. Funding challenges for governments and businesses may cause construction activity to decrease in the next few years.

### **Information from State Agencies**

The committee received information from the Department of Mineral Resources regarding oil and gas development activities. Oil companies slowed the oil production on approximately 6,600 wells and shut in approximately 3,300 wells in the spring of 2020. Approximately 70 to 80 well completions are needed per month to maintain oil production. In August 2020, 11 rigs were operating and capable of drilling a combined total of 20 to 25 wells per month. Approximately 35 fracturing crews are needed to maintain production levels, but only 3 fracturing crews were operating in August 2020. The average estimated cost to produce a barrel of oil in the core area of the Bakken is \$27, consisting of \$15 for the cost to lift the oil from the well and \$12 for other costs, including transportation. Record levels of oil in storage may suppress oil prices in the short term.

The committee received information from the North Dakota Pipeline Authority regarding oil price and production trends. Based on the New York Mercantile Exchange (NYMEX) futures for West Texas Intermediate oil prices as of August 11, 2020, the North Dakota Pipeline Authority was forecasting oil production to average 1.23 million barrels per day in the 2021-23 biennium. Oil production will decrease if fewer than 70 wells are completed per month because of the natural production decline from oil wells. North Dakota oil production could decrease to 800,000 barrels per day by 2024 if well completions remain at 20 wells per month.

The Office of Management and Budget and the Tax Department provided information to the committee regarding tax revenue collections. General fund revenues exceeded the 2019 legislative revenue forecast by 9 percent in July 2020 due to additional income tax collections paid in July rather than April under the delayed filing provisions related to the COVID-19 pandemic. Approximately \$53 million of income tax collections were delayed from April 2020 to July 2020 based on a comparison to the collections in 2019. The state collected \$22.2 million from online sales tax collections for the first 6 months of 2020, an increase of \$13.6 million compared to the first 6 months of 2019. The COVID-19 pandemic may cause a more permanent shift toward online purchases. Although the state receives sales tax collections from online sales, the state's economic activity may be reduced since the sales are not being made at physical retail establishments in the state.

### **State Revenue Forecasts**

The committee received information from the Legislative Council regarding a budget outlook for the 2019-21 and 2021-23 bienniums. The budget outlook provides information on estimated revenues and appropriations of the general fund, including anticipated costs to continue various programs and sources of funding that may be available to address a budgetary shortfall. Based on the outlook, the estimated general fund balance for the end of the 2019-21 biennium is \$197 million assuming a transfer to the budget stabilization fund is not necessary. The preliminary estimated general fund shortfall for the 2021-23 biennium is \$735 million before any additional spending requests, such as state employee salary increases, recommendations by the Governor, and legislative initiatives.

### **Consulting Services - IHS Markit**

The committee issued a request for proposals for economic forecasting data and received proposals from the University of North Dakota and IHS Markit. The committee selected IHS Markit to provide consulting services.

### **Economic Trends**

The committee received information from IHS Markit regarding economic trends, including trends in the national economy, the oil industry, and the agriculture industry. Gross domestic product (GDP) for the United States in the 2<sup>nd</sup> quarter of 2020 decreased by 40 percent compared to levels in February 2020 because of the COVID-19 pandemic. Gross domestic product for the United States is anticipated to increase by 30 percent in the 3<sup>rd</sup> quarter of 2020 compared to the 2<sup>nd</sup> quarter followed by moderate growth in the 4<sup>th</sup> quarter. Gross state product for North Dakota is anticipated to return to 2019 levels by 2023 while total employment is anticipated to remain below 2019 levels until after 2023.

### **Forecasting Models**

IHS Markit used custom models to forecast sales and use tax collections, motor vehicle excise tax collections, individual income tax collections, and corporate income tax collections. The forecasting models are based on data from IHS Markit's existing macroeconomic models for the United States as well as data from industry-specific forecasts. The models are similar to the models used during the 2017-18 interim with changes to the economic drivers. The economic drivers reflect the strongest correlation between the economic activity and the tax collections.

The model to forecast the sales and use tax collections was modified for the 2019-20 interim to estimate the taxable sales for each of North Dakota's 15 industry sectors. The estimates for the sectors are aggregated, and the tax rate is applied to calculate the tax collections. The primary drivers for the sectors include new producing oil wells, industry employment, and gross state product.

The motor vehicle excise tax collections are driven primarily by new car registrations. The primary economic drivers to forecast individual income tax collections are wage withholdings and property income, which includes rental income, royalty income, and dividend income. New producing oil wells are the primary drivers to forecast corporate income tax collections. After calculating the individual and corporate income tax collections, the estimated transfers to the refund reserve accounts are removed. The refund reserve accounts are used to pay refunds and the estimated transfers are based on historical transfers.

## Forecasting Results

The committee received information from IHS Markit regarding the results from the forecasting models. The schedules below provide information on the 2019-21 biennium revised general fund revenue forecast and the 2021-23 biennium preliminary general fund revenue forecast based on estimates prepared by OMB and by IHS Markit.

2019-21 Biennium Revised Revenue Forecasts						
	OMB Forecast	IHS - Baseline Forecast	Increase (Decrease)		IHS - Pessimistic Forecast	IHS - Optimistic Forecast
			Amount	Percent		
Sales and use tax	\$1,771,298,564	\$1,826,825,051	\$55,526,487	3.1%	\$1,684,761,587	\$1,855,273,507
Motor vehicle excise tax	225,871,814	226,192,324	320,510	0.1%	219,923,184	229,747,134
Individual income tax	792,937,603	765,234,287	(27,703,316)	(3.5%)	743,991,209	771,287,917
Corporate income tax	178,960,333	153,640,874	(25,319,459)	(14.1%)	141,826,712	171,793,816
<b>Total major tax types</b>	<b>\$2,969,068,314</b>	<b>\$2,971,892,536</b>	<b>\$2,824,222</b>	<b>0.1%</b>	<b>\$2,790,502,692</b>	<b>\$3,028,102,374</b>

2021-23 Biennium Preliminary Revenue Forecasts						
	OMB Forecast	IHS - Baseline Forecast	Increase (Decrease)		IHS - Pessimistic Forecast	IHS - Optimistic Forecast
			Amount	Percent		
Sales and use tax	\$1,700,264,000	\$1,888,021,935	\$187,757,935	11.0%	\$1,481,836,505	\$2,015,618,065
Motor vehicle excise tax	237,728,000	220,561,100	(17,166,900)	(7.2%)	216,226,990	223,720,130
Individual income tax	782,127,000	777,059,176	(5,067,824)	(0.6%)	735,307,909	797,983,478
Corporate income tax	189,033,000	176,130,710	(12,902,290)	(6.8%)	101,480,677	201,966,670
<b>Total major tax types</b>	<b>\$2,909,152,000</b>	<b>\$3,061,772,921</b>	<b>\$152,620,921</b>	<b>5.2%</b>	<b>\$2,534,852,081</b>	<b>\$3,239,288,343</b>

The schedules below provide information on forecasted oil prices, oil production, and new producing oil wells based on estimates prepared by IHS Markit.

West Texas Intermediate Oil Prices (Calendar Year Average)						
	2020	2021	2022	2023	2024	2025
Baseline forecast	\$36.13	\$46.64	\$52.71	\$53.25	\$53.51	\$54.10
<b>Alternate scenarios</b>						
Pessimistic forecast	\$32.23	\$29.50	\$34.02	\$44.20	\$51.36	\$52.67
Optimistic forecast	\$39.60	\$54.86	\$57.44	\$54.08	\$53.99	\$54.58

North Dakota Oil Production (Average Barrels Per Day by Calendar Year)						
	2020	2021	2022	2023	2024	2025
Baseline forecast	1,180,000	1,110,000	1,140,000	1,190,000	1,220,000	1,230,000
<b>Alternate scenarios</b>						
Pessimistic forecast	1,170,000	1,040,000	920,000	870,000	880,000	930,000
Optimistic forecast	1,190,000	1,200,000	1,280,000	1,330,000	1,360,000	1,380,000

New Producing Oil Wells (Per Calendar Year)						
	2020	2021	2022	2023	2024	2025
Baseline forecast	131	532	723	833	854	843
<b>Alternate scenarios</b>						
Pessimistic forecast	76	129	162	411	738	751
Optimistic forecast	197	903	915	846	870	856

## Recommendation

The committee makes no recommendation regarding the study of state revenues and state revenue forecasts. However, IHS Markit will provide additional updates to the Appropriations Committees during the 2021 legislative session regarding economic forecasting data, including general fund revenue estimates, oil price estimates, and oil production estimates for the remainder of the 2019-21 biennium and for the 2021-23 biennium.

# NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned one study during the 2019-20 interim. House Bill No. 1021 (2019) directed the Legislative Management to study access to public and private lands for hunting, trapping, fishing, and related issues, including trespass violations and penalties, and provide recommendations regarding a land access database with the capability of electronic posting. The bill also required the Information Technology Department (ITD) and the Game and Fish Department, at the direction of the Legislative Management, to establish a trial electronic posting project for up to three counties.

The committee was comprised of nine voting members and four nonvoting members. As provided in House Bill No. 1021, the voting members included two citizen members representing agriculture landowners, two citizen members representing sportsmen organizations, and five members of the Legislative Assembly including one member of the majority party in the House of Representatives, one member of the minority party in the House of Representatives, one member of the majority party in the Senate, one member of the minority party in the Senate, and one member from either party in either chamber to serve as the committee chairman. The nonvoting members included a representative of the North Dakota Association of Counties, the Agriculture Commissioner (or the commissioner's designee), the Director of the Game and Fish Department (or the director's designee), the Chief Information Officer (or the officer's designee), and a representative of the North Dakota State's Attorneys' Association.

The members of the committee were Senators Robert Erbele (Chairman), Jim Dotzenrod, and Dale Patten; Representatives Chuck Damschen and Gretchen Dobervich; citizen members Mr. David DeWald, Mr. Brian Schanilec, Mr. Joe Schettler, and Mr. John Weinand; and nonvoting members Mr. Jason Horning, Next General 9-1-1 Program Manager, North Dakota Association of Counties; Mr. Doug Goehring, Agriculture Commissioner; Mr. Terry Steinwand, Director of the Game and Fish Department; Mr. Dorman Bazzell, Chief Data Officer, Information Technology Department; and Mr. Ryan Younggren, Assistant State's Attorney, Cass County.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## BACKGROUND

### North Dakota Law Regarding Land Access for Hunters

North Dakota Century Code Sections 20.1-01-18 and 20.1-01-19 indicate private land is open to hunters to hunt, pursue game, and recover game, unless the land is posted in accordance with Section 20.1-01-17. To post land under Section 20.1-01-17, an owner or tenant of the land must place signs along the public highway or land giving notice that hunting is not permitted on the land. If the land is enclosed entirely by a fence, the owner or tenant must place signs at each gate to post the land. However, when an owner or tenant's efforts to post the land do not satisfy all the requirements, the land still is deemed posted if the owner or tenant's efforts "substantially complied" with Section 20.1-01-17 and notice against hunting or trespassing "is clear from the circumstances." Additionally, Section 20.1-01-22 makes it unlawful to hunt or pursue game in unharvested cereal or oilseed crops without the owner's or tenant's permission, regardless whether the land is posted. There is a legal presumption that an individual on legally posted land who is carrying a firearm or other weapon declared legal by a governor's proclamation entered the posted land to hunt or pursue game. Specifically, under Section 20.1-01-20, carrying the weapon on posted land is prima facie evidence the individual entered the land for one or both of those purposes.

Access to posted land for hunting or trapping is available if proper permission is granted under Section 20.1-01-18. If a hunter wishes to hunt on posted land, the hunter may request permission from a person legally entitled to give permission to hunt on the land. The permission does not need to be in writing. However, if a trapper wants to trap protected fur-bearing animals on posted land, the trapper must obtain written permission from the owner or operator of the land. Additionally, under Section 20.1-01-19, a person may enter posted land to recover game shot or killed lawfully on other land.

The requirements for hunting guides and outfitters differ from the requirements for hunters. Under Section 20.1-03-42, a hunting guide or outfitter is not permitted to operate on posted private land, certain land owned by the state or on which the Game and Fish Department pays "in lieu of" taxes, and certain federal land without informing the landowner and obtaining permission to provide outfitting or guiding services on the land. The permission may be provided orally. However, if a disagreement arises over whether permission was granted, there is a presumption permission was not granted unless the permission is in writing.

Hunting on posted land without permission is a strict liability offense under Section 20.1-01-18. An individual who hunts on posted land is guilty of the offense even if the individual does not know the individual is on posted land. An individual's mistaken belief about the facts or law are not relevant to the individual's culpability under the statute. Unlawfully hunting or pursuing game on posted land without permission is a Class B misdemeanor for a first offense and a Class A misdemeanor for a subsequent offense within a 2-year period. In addition, under Section 20.1-01-26, a court is required to suspend a defendant's hunting, trapping, or fishing privileges for at least 1 year for a first conviction, 2 years for a second conviction, and 3 years for a third or subsequent violation. The court also may require the defendant to complete a hunter education course before obtaining a new license.

The Supreme Court clearly has held hunters are responsible for determining whether they are on posted land. In *State v. Mittelider*, 2011 ND 242 (N.D. 2011), the Supreme Court upheld a conviction for individuals who shot a deer on a wildlife refuge that was posted improperly. The individuals said they did not know they were on a wildlife refuge but knew a refuge was nearby. The Supreme Court said the individuals "could have determined the boundaries of the refuge before the deer was shot." Similarly, in *State v. Bandbord*, 2014 ND 228 (N.D. 2014), the Supreme Court upheld the conviction of a hunter who did not think he was hunting on posted land, and held "the illegal hunting statutes do place the burden upon the hunter to ensure that the land is open to hunting."

### **North Dakota Law Regarding Trespass**

Trespass may be a civil or criminal offense. Criminal trespass is defined by statute, but civil trespass exists as a matter of common law recognized by courts. An individual found guilty of criminal trespass may be punished by fines and imprisonment, while an individual found liable for civil trespass may have to pay monetary damages to the owner or lawful occupant of the land on which the trespass occurred.

Civil trespass is not defined by statute. According to the Supreme Court, "[i]n North Dakota, civil trespass exists at common law . . . We have previously defined civil trespass as occurring "where a person 'intentionally and without a consensual or other privilege . . . enters land in possession of another or any part thereof or causes a thing or third person so to do.'"" *Gray v. Berg*, 2016 ND 82, 83 (N.D. 2016). A trespasser is liable to the property owner even if the trespasser does not cause harm to a legally protected interest. However, a property owner does not have a claim for civil trespass if the alleged trespasser did not interfere with the property, intend to enter the property without consent or privilege, or take an affirmative voluntary act to enter the property without consent or privilege. For example, in *Tibert v. Slominski*, 2005 ND 34 (N.D. 2005), the Supreme Court said a landowner did not have a claim of civil trespass against a grain company based on a mere anticipation the company's trucks would cause dust to settle on the landowner's property. The Supreme Court said the grain company had not interfered with the plaintiff's property.

Criminal trespass is defined by statute. Under Section 12.1-22-03, an individual who knows the individual is not licensed or privileged to do so is guilty of a felony if the individual enters or remains in a dwelling or highly secured premises. The individual is guilty of a misdemeanor if the individual:

- Enters or remains in or on a building, occupied structure, or storage structure, or separately secured or occupied portion of a building or structure;
- Enters or remains in a place enclosed as manifestly to exclude intruders; or
- Enters or remains in a place as to which notice against trespass is given by actual communication to the individual by the individual in charge of the premises or other authorized individual, or by posting in a manner reasonably likely to come to the attention of intruders if the name of the person posting the land appears on each sign in legible characters. Even if an authorized individual complies only substantially with the notice requirements, and notice against trespass is clear from the circumstances, an intruder is guilty of criminal trespass.

Under the statute, criminal trespass requires knowledge. An individual has to know the individual is not licensed or privileged to enter or remain on the property at issue to commit criminal trespass. However, an individual does not have to know the individual is committing a crime to be guilty of criminal trespass. The statutory definition of "knowingly" provides the basis for determining when an individual knows the individual is not licensed or privileged to remain on property. Under Section 12.1-02-02, a person acts knowingly if "when he engages in the conduct, he knows or has a firm belief, unaccompanied by a substantial doubt, that he is doing so, whether or not it is his purpose to do so." In *State v. Bertram*, 2006 ND 10 (N.D. 2006), the Supreme Court stated a person's knowledge depends on all the surrounding facts and circumstances and is a factual question that may be established by circumstantial evidence. Also, under the statutory definition of criminal trespass, an individual licensed or privileged to be on the property at issue is not trespassing. The Supreme Court has defined the terms "licensed" and "privileged". In *State v. Purdy*, 491 N.W.2d 402, 410 (N.D. 1992), the Supreme Court stated an individual is licensed to be on property "if the entry was consensual." In the same case, the court stated an individual is privileged to be on property if the individual "naturally may be expected

to be on the premises often and in the natural course of his duties or habits" or the individual has "the freedom or authority to act and to use property."

Generally, an individual is not allowed to enter or remain on fenced property if the individual knows the individual is not licensed or privileged to be there. However, the Supreme Court held culpability for trespass on fenced property depends, in part, on the fence at issue. Under Section 12.1-22-03, "[a]n individual is guilty of a class A misdemeanor if, knowing that that individual is not licensed or privileged to do so, the individual . . . [e]nters or remains in any place so enclosed as manifestly to exclude intruders." The word "manifestly" is not defined by statute, so courts look to the plain, ordinary, and commonly understood meaning of the word to determine its legal meaning, pursuant to Section 1-02-02. In *State v. Bearrunner*, 2019 ND 29 (N.D. 2019), the Supreme Court noted "[t]he word 'manifest' is defined as 'readily perceived by the senses' or 'easily understood or recognized by the mind: obvious.'"

According to the court, not all fences satisfy the requirements of Section 12.1-22-03:

A plain reading of the statute indicates the fence must be enclosed in a manner that obviously excludes intruders before an individual is guilty of trespass. Fences differ in size, materials of construction, and purpose. One fence may clearly communicate that trespassers are not allowed while another fence may not. Accordingly, whether a fence is so enclosed that it obviously excludes intruders is a finding of fact, not a matter of law . . . [W]e decline to hold as a matter of law that an open gate is an invitation to outsiders to gather on private property.

As a result, cases in which an individual is alleged to have trespassed criminally on fenced property will turn, in part, on what type of fence and gate are on the relevant property.

In 1990 the North Dakota Attorney General issued a legal opinion to Representative Dick Tokach regarding various types of trespass violations:

[The statute regarding trespass on enclosed property] has been generally construed to involve an enclosure more substantial than a typical barbed wire fence. Barbed wire fences may be construed as utilized to keep livestock in a property rather than keeping people out of that property. Fences of the type which have generally been found to come within this section include chain link or other fences of similar height or mass which clearly evidence the owner's intent that access to that owner's property is not permitted. However, a prosecutor may determine that this section may apply depending upon the specific facts and circumstances of the individual case.

In contrast, in *Bearrunner*, the Supreme Court upheld the defendant's conviction for criminally trespassing on land enclosed by a barbed wire fence. Ultimately, juries must weigh the facts of any allegation of trespassing on fenced property to determine whether the enclosure manifestly excludes intruders.

House Bill No. 1293 (2017) created a new subsection to Section 12.1-22-03 to provide a noncriminal penalty for trespass. According to the legislative history of the bill, the new subsection was intended to reduce the burden on courts by allowing peace officers to cite some trespassers and fine the trespassers \$250 for a violation. Specifically, the subsection applies to an individual who knows the individual is not licensed or privileged to be in a location where notice is posted "in a manner reasonably likely to come to the attention of intruders." This language mirrors part of Section 12.1-22-03(3). As a result, an individual engaging in that activity is subject to a criminal penalty under subsection 3 and a noncriminal fine under the new subsection, subsection 4. Additionally, if the individual also is hunting, the individual is subject to a criminal penalty under Chapter 20.1-01.

Criminal trespass and hunting on posted land are separate offenses with separate elements and penalties. In some situations, a prosecutor may be able to bring charges against an individual under either the criminal trespass statute or the hunting on posted land statute. The Supreme Court held in *Bearrunner* "N.D.C.C. § 20.1-01-17 does not create an exception to N.D.C.C. § 12.1-22-03. Instead, it creates a separate offense imposing a separate penalty that includes the loss of hunting privileges."

### **Legislative History of Land Access Bill Draft in the 65<sup>th</sup> Legislative Assembly**

During the 2019 legislative session, the House and Senate Agriculture Committees discussed many versions of Senate Bill No. 2315 in an attempt to amend access to private lands for hunting, trapping, and other purposes. Some of the versions changed the default status of unposted land to "closed" to hunters and others without permission to be on the property. Under these versions, land could not be entered without the landowner's permission. Some versions of the bill included provisions for one or more state agencies to develop and operate a database online or on another electronic platform, which would indicate which parcels of land are "open" or "closed" to hunters and others. In some versions, the database would have been developed based on geographic information system (GIS) data from counties. The database would have served as an electronic posting system, and, if one of these versions had become law, individuals would have had to check the database before entering another person's land. These versions of the bill also would have

preserved landowners' option to physically post their land instead of using the online database. Many versions of the bill changed the penalties for trespassing as well. The legislative history of Senate Bill No. 2315 includes testimony from many members of the public both in support of and opposition to different versions of the bill. The bill ultimately failed; however, the study of the issues raised in committee hearings on Senate Bill No. 2315 was included in House Bill No. 1061.

### **Other States**

In Minnesota, an individual may not enter agricultural land or posted land for outdoor recreation unless the individual has permission from the owner, occupant, or lessee, or the individual is on foot and retrieving either wounded game that was lawfully shot or a hunting dog under Minnesota Statutes Annotated Sections 97B.001 and 609.605(5).

In Montana, an individual is required to obtain permission from the landowner, lessee, or an agent of the landowner or lessee before entering land to hunt or trap under Montana Code Annotation Section 87-6-415. Montana's Department of Fish, Wildlife, and Parks operates a block management program, which includes publication of a guide identifying land where hunters may request free reservations for hunting through a landowner or the department. In return for allowing access to their land, landowners may receive free sportsmen's licenses, limited liability protection, livestock loss reimbursement, and compensation up to \$15,000. The program is funded by license fees collected by the department.

In South Dakota, an individual is required to have a landowner or lessee's permission to fish, hunt, or trap on private land under South Dakota Codified Laws Section 41-9-1.

### **TESTIMONY AND COMMITTEE CONSIDERATIONS**

The committee discussed the need to bring landowners and sportsmen together to discuss land access issues in a productive, collaborative way. The committee discussed the need to hear the opinions and concerns of landowners and sportsmen, and find a common solution to the issues raised in the 2019 legislative session. The committee urged organizations representing landowners and sportsmen to provide input and testimony to the committee.

The committee received testimony from representatives of the Game and Fish Department regarding the number, types, and results of violations for trespass or hunting on posted land reported by the department's wardens over the past 5 years. Over that period, approximately 329 citations issued by the wardens for hunting on posted land resulted in court dispositions. Wardens also issued 131 citations for criminal trespass and 20 citations for noncriminal trespass. The wardens also reported an average of 111 complaints per year with the following outcomes:

- 35 percent resulted in prosecutions;
- 12 percent had unknown suspects;
- 16 percent resulted in the complainant declining to prosecute;
- 3 percent resulted in the prosecuted declining to prosecute;
- 6 percent resulted in a warning;
- 19 percent ended up not being legal violations; and
- 9 percent had unknown outcomes.

Most violations were committed by hunters who had not committed violations previously. Morton County had the highest number of incidents of hunting on posted land reported to the department, and was followed by Richland County, Emmons County, and Dickey County.

The committee received testimony from a representative of the Game and Fish Department regarding data and applications available to help develop an electronic posting database. The state is developing a GIS to collect and consolidate many types of data for state agencies. The GIS includes data regarding land parcels and landowners in some counties and can form the basis of an electronic posting database. Also, there are multiple electronic applications used by hunters across the country to identify land open for hunting which could be tailored to provide information to hunters from an electronic posting database in the state. The applications can be accessed on mobile devices in the field.

The committee received testimony from a representative of the Game and Fish Department regarding the percentage of land in the state represented in gratis hunting licenses. Under Section 20.1-03-11, these licenses are available for certain persons who own or lease land in the state, and the licenses permit hunting on the owned or leased land. If the owner or lessee is not an individual, the owner or lessee may obtain one license to be provided to an individual meeting

certain qualifications. On average, approximately 12 million acres out of the 45.3 million acres in the state are represented by gratis licenses.

The committee received information from a representative of the Game and Fish Department regarding access to fishing locations. The department has easements or adjoining public land for the vast majority of lakes the department manages, and access to most fishing locations is free. It would cost tens of millions of dollars for the department to maintain winter access to all ice fishing locations.

The committee received testimony from a representative of the Department of Trust Lands regarding public access to trust lands. The department has had a policy regarding public access since 1983, and, at the time of the testimony, was in the process of adopting an administrative rule codifying the policy. The administrative rules were adopted and became effective on January 1, 2020. Under the policy, the public may access trust lands for recreational purposes unless the lands are properly posted by the department. However, vehicles may not be used on trust lands. In 2018, approximately 98 percent of trust lands were open to hunting.

The committee received information from representatives of the North Dakota Association of Counties regarding the willingness and abilities of counties to participate in a pilot program to evaluate the use of an online land access database providing electronic posting of land. Counties have been providing information to state agencies for the GIS. At the beginning of the biennium, 48 of the 53 counties had at least some GIS data regarding land parcels. However, only 20 of the 48 counties had all the necessary GIS data for an electronic posting database. There is considerable variation in the frequency of updates to counties' GIS land parcel data. Some counties' data are updated only annually in preparation for distribution of tax statements, and the infrequent updates could lead to incorrect ownership information or other errors in an electronic posting database. There also is variability in the resources counties have to collect and update parcel data. Some counties lack internal resources and contract with vendors for this work. Increasing the frequency of data updates could be costly for these counties. Richland, Ramsey, Slope, and McKenzie Counties were willing to participate in the electronic posting pilot program. House Bill No. 1021 allowed up to three counties to participate. The committee chose Richland, Ramsey, and Slope Counties so different parts of the state and different-sized counties would be represented.

The committee discussed the need for clarity and the ability to prosecute criminal trespass cases. The committee received information from a representative of the North Dakota State's Attorneys' Association regarding prosecutions of trespass cases and implications of potential changes to land access laws. No central database of trespass prosecutions exists. Courts generally set fines for hunting on posted land at around \$600 and do not send offenders to jail. Prosecutors sometimes charge individuals who hunt on posted land with trespass rather than hunting on posted land because the penalty for trespass does not include suspension of an individual's hunting license. According to the information, when a prosecutor is deciding whether to charge an individual with trespass, the prosecutor must consider whether the circumstances gave the individual notice the individual should not have been in the relevant location. Although House Bill No. 1021 authorized a pilot program to evaluate electronic posting, there are no penalties for hunting on land that is not physically posted, even if the land is posted in the electronic posting database.

The representative of the North Dakota State's Attorneys' Association also testified proving criminal intent for trespassing on electronically posted land may be difficult. According to the testimony, there would have to be a legal duty for the defendant to check the electronic posting database before entering the land, and the defendant would have to know the duty existed. The testimony noted the potential impacts on urban areas should be considered when drafting trespass and land posting statutes. The committee discussed wishing to continue permitting neighborly interactions, deliveries, and normal business operations in urban areas.

The committee discussed the need for a public information campaign regarding the pilot program. Representatives of landowner groups agreed to send communications to their members regarding the program and encourage participation in the pilot program. The Game and Fish Department and a representative of a sportsmen's organization agreed to provide information about the pilot program to hunters.

The committee discussed the need to evaluate the pilot program. The Information Technology Department and the Game and Fish Department agreed to identify the number of users of the land access database, and the Game and Fish Department agreed to survey users about the program.

The committee made decisions concerning several logistical considerations for the development of an online database for electronic posting and a mobile application for hunters to access the electronic posting information in the field. Representatives of ITD and the Game and Fish Department provided mock-ups of the database and application. The committee decided the database would reside on the Game and Fish Department's website. The Information Technology Department and the Game and Fish Department developed the database, which the committee approved



on May 11, 2020. Landowners in the three counties participating in the pilot program could post land electronically in the database through July 15, 2020. At the final committee meeting, the Game and Fish Department reported 79 landowners used the database to electronically post 260 tracts of land representing approximately 38,000 acres. Hunters can access the electronic posting information on the Game and Fish Department's website or in the mobile application.

## **BILL DRAFTS**

### **Study Continuation**

The committee considered a bill draft to continue the study of access to private and public lands for hunting, trapping, fishing, and related issues, including evaluation of the electronic posting database and mobile application. The committee discussed the study language and concluded the language is broad enough to include consideration of trespass laws. The bill draft included the same list of criteria for committee membership as House Bill No. 1021 included.

### **Expanding the Criminal Trespass Statute and Making Names on Posting Signs Optional**

The committee considered a bill draft expanding the definition of criminal trespass. The bill draft would have made entering or remaining on electronically posted land criminal trespass under the same conditions that make entering or remaining on physically posted land criminal trespass. The bill draft would have made entering or remaining on land outside city limits for recreational purposes a misdemeanor if the individual on the land is not privileged or licensed to be there. The bill draft also would have made including a landowner's name on a posting sign optional rather than mandatory.

### **Expanding the Criminal Trespass Statute and Requirements for Posting Land Against Hunting**

The committee considered a bill draft to expand the definition of criminal trespass and revise the requirements for posting land against hunting. Under the bill draft, entering or remaining on electronically posted land would constitute criminal trespass in the same manner as entering or remaining on physically posted land. The bill draft provided including a landowner's name on a posting sign would be optional. The bill draft also clarifies that entering or remaining on property enclosed by any type of fence without license or permission to do so constitutes criminal trespass. This clarification arose from the committee's discussion of the North Dakota Supreme Court's language in *State v. Bearrunner*, 2019 ND 29 (N.D. 2019), indicating not all fences necessarily constitute enclosures "manifestly to exclude intruders." The bill draft allows landowners to post land physically or electronically in an electronic database maintained or authorized by the state and available to the public. The committee members representing sportsmen's organizations raised concerns about individuals illegally posting land if the requirement to include a poster's name were removed from the statute. The representatives of sportsmen's organizations also indicated hunters would be unable to contact a landowner to ask permission to hunt on posted land if signs did not include landowners' names. The committee discussed potential difficulty in proving the requisite intent if entering electronically posted land constituted criminal trespass. The committee revised the bill draft to remove the language making names on posting signs optional and language regarding electronically posted land in the criminal trespass statute.

### **Electronic Posting**

The committee considered a bill draft regarding the requirements for posting land against hunting to include electronic posting. This bill draft would give landowners the option to post their land physically or electronically in an electronic database maintained or authorized by the state and available to the public.

## **RECOMMENDATIONS**

The committee recommends [Senate Bill No. 2036](#) to continue the study of land access and related issues. The committee recommends [Senate Bill No. 2037](#) allowing landowners to physically or electronically post land and to include all fenced land in the criminal trespass statute. The committee recommends [Senate Bill No. 2038](#) to allow landowners the option of either physically or electronically posting land.

# TAXATION COMMITTEE

The Taxation Committee was assigned four studies for the 2019-20 interim:

- Section 1 of Senate Bill No. 2355 (2019) directed a study of the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices.
- The Legislative Management directed a study of whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate.
- Section 1 of House Bill No. 1474 (2019) directed a study of options for replacing revenue generated by special assessments with revenue from an alternative local funding source.
- The Legislative Management directed a study of economic development tax incentives pursuant to North Dakota Century Code Section 54-35-26.

The Legislative Management directed the committee to receive six reports:

- An annual report from the Tax Commissioner from compiled reports from counties receiving allocations of oil and gas gross production tax revenues describing funds received, expended, and unexpended (Section 57-51-15(6)).
- An annual report from the Tax Commissioner from compiled reports from school districts receiving allocations of oil and gas gross production tax revenues describing funds received and expended (Section 57-51-15(7)).
- An annual report from the Tax Commissioner on statewide property tax increases (Section 57-20-04).
- An annual report from the Department of Commerce's Division of Community Services on renaissance zone progress (Section 40-63-03(2)).
- An annual report from the Department of Commerce compiling reports from cities that have renaissance zone property included in a tax increment financing district (Section 40-63-03(10)).
- A compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year (Section 54-60.1-07).

Committee members were Representatives Jason Dockter (Chairman), Matt Eidson, Sebastian Ertelt, Ron Guggisberg, Patrick Hatlestad, Craig Headland, Tom Kading, Ben Koppelman, Alisa Mitskog, and Vicky Steiner and Senators Dwight Cook, Jim Dotzenrod, Jordan Kannianen, Curt Kreun, Dale Patten, and Jessica Unruh-Bell.

Representative Jim Grueneich served as Chairman of the committee until his resignation from the Legislative Assembly in February 2020, and Representative Jake G. Blum served on the committee until his resignation from the Legislative Assembly in October 2019.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## TAXATION OF ELECTRONIC SMOKING DEVICES STUDY

Section 1 of Senate Bill No. 2355 (2019) directed a study of the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices. The study required consideration of the current method of taxation applied to these products, the methods of taxation applied in other states, and the fiscal impact of applying an alternative or additional method of taxation. As introduced, the bill would have expanded the definition of a tobacco product to include electronic smoking devices and liquid nicotine and changed the tax applied to all cigarette and tobacco products to a value-based method of taxation by imposing a tax of 28 percent on the wholesale cost of those products.

### Background

Electronic smoking devices have been available to consumers in the United States for more than a decade. The devices generally consist of a battery, an atomizer, a sensor that detects inhalation, and a cartridge containing a liquid solution (e-liquid) that may or may not contain nicotine. The devices have been marketed as a safer alternative to traditional cigarettes that cause users to inhale smoke and tar.

### Federal Regulation

In 2009, Congress passed the federal Family Smoking Prevention and Tobacco Control Act, which gave the United States Food and Drug Administration (FDA) the authority to regulate the manufacturing, distribution, and marketing of

tobacco products. This authority was expanded by rule in 2016 under the FDA's authority to "deem" certain products as tobacco products. The final deeming rule, which became effective on August 8, 2016, allows the FDA to regulate electronic nicotine delivery systems, which include e-cigarettes, vapes, e-liquids, e-cigars, e-pipes, and e-hookahs. The rule subjects the products to the same rules applied to other tobacco products, including the prohibition on sales to individuals under the age of 18, sales in vending machines located outside of adult-only areas, and free sample distributions. The rule also subjects all newly regulated tobacco products, including electronic nicotine delivery systems, to FDA marketing authorization requirements unless the products were commercially marketed before February 16, 2007.

The FDA staggered the deadlines by which manufacturers are required to submit premarket review applications based on the type of application submitted. In August 2017, the FDA extended the application deadline for manufacturers submitting applications for review of electronic nicotine delivery system products to August 8, 2022. Following various additional changes to the application deadlines, multiple public health groups filed a lawsuit against the FDA which culminated in an order from the United States District Court in Maryland requiring the FDA to set a deadline of May 11, 2020, for manufacturers to submit premarket tobacco applications for any electronic nicotine delivery systems on the market as of August 8, 2016. Premarket tobacco applications submitted to the FDA must contain information detailing any investigations or reports that illustrate the health risks of the product submitted for review and whether the product poses less of a risk compared to other products; a statement of the components, ingredients, additives, and properties of the product; a description of the methods used in manufacturing, processing, and packaging the product; samples of the product and any necessary components of the product; and samples of proposed warning labels for the product.

On September 11, 2019, President Donald Trump announced the FDA would take steps to remove flavored e-cigarettes from the market. The announcement targeted the rapid increase in the underage use of e-cigarettes which, according to statistics cited by the FDA, were used by 3.62 million middle and high school students in 2018. The announcement also came after weeks of widely publicized reports of lung injuries and deaths seemingly linked to vaping.

### **State Regulation**

Legislation has been enacted in various states to regulate e-cigarettes, partially as a result of delays in regulating the products at the federal level. According to data published by the Public Health Law Center at Mitchell Hamline School of Law, as of June 15, 2019, 29 states have enacted e-cigarette product packaging laws, 26 states have enacted licensing requirement laws for e-cigarette retailers, and 20 states have enacted laws raising the minimum age at which e-cigarettes legally may be purchased to either age 19 or 21. North Dakota has enacted laws that prohibit the sale or distribution of electronic smoking devices or e-liquid to individuals under the age of 18, require nicotine liquid containers be child-resistant, and prohibit the operation of e-cigarettes in public places, places of employment, and within 20 feet of entrances, exits, windows, air intakes, and ventilation systems.

States and cities also have acted to ban various e-cigarette products following reports of lung injury and death seemingly linked to vaping. In June 2019, San Francisco Mayor London Breed signed an ordinance, effective January 2020, suspending the sale of all e-cigarettes that had yet to undergo a premarket review by the FDA. The ordinance expanded upon the existing ban on flavored e-cigarettes, which had been in place since 2017. On September 4, 2019, Michigan Governor Gretchen Whitmer ordered the Michigan Department of Health and Human Services to issue emergency rules banning the sale of flavored nicotine vaping products in Michigan. On September 15, 2019, New York Governor Andrew Cuomo announced an emergency executive action to ban the sale of flavored e-cigarettes in New York State.

### **Taxation of Electronic Smoking Devices**

Twenty-four states and the District of Columbia have taken administrative action or passed legislation imposing tax on electronic smoking devices or e-liquid. In 2012, Minnesota was the first state to impose a tax. Utah, Virginia, and Wyoming most recently imposed a tax, which became effective on July 1, 2020.

Taxes on electronic smoking devices or e-liquid generally take the form of a specific unit-based tax or a value-based tax. Unit-based taxes are a specific tax based on volume and generally take the form of a cents per milliliter tax on e-liquid. Value-based taxes are imposed at a specified percentage of the cost or price of a product and may be imposed at the wholesale or retail level. Each method of taxation poses its own set of benefits and detriments, which should be weighed by lawmakers when considering a tax.

Consideration also must be given to the point at which the tax will be imposed. Unlike traditional tobacco products, electronic smoking devices do not always flow from a manufacturer to a distributor or retailer. Care must be taken to determine the point at which the tax will be imposed based on the manner in which products reach consumers. The types of products also must be evaluated to determine if a tax will be imposed on all electronic cigarette products, including e-liquid; on e-liquid alone; or only on e-liquid that contains nicotine.

Policy arguments have been raised regarding the rate of tax imposed on electronic smoking devices and e-liquid. Proponents of lower taxes generally argue a higher tax burden may drive consumers back to purchasing traditional cigarettes, which may cause more detrimental health consequences. Proponents of higher taxes generally argue a lower tax burden may make electronic smoking devices more accessible, potentially attracting consumers who previously were not smokers. An alternative method of analysis removes policy arguments from consideration entirely, taking the view taxation should not be applied as a means to influence consumer behaviors. This approach takes into consideration the need for revenue and the amount of tax required to generate the needed revenue.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the amount of revenue generated by the tax on cigarette and tobacco products. The committee was informed \$26.5 million in cigarette and tobacco tax revenue was generated for the state in fiscal year 2018. Neither a cigarette nor tobacco tax is imposed on vapor products and vapor product wholesalers and retailers are not subject to separate licensing or reporting requirements. Vapor products only are subject to general sales and use tax. The committee reviewed information on the number of states that impose a separate tax on vapor products and the type and amount of tax imposed in each state. Twenty-four states and the District of Columbia impose a tax on vapor products or e-liquid. The tax imposed in these states ranges from 5 cents to 10 cents per milliliter of e-liquid and from 8 to 91 percent of the wholesale or retail price of vapor products. Imposition of tax on a per-milliliter basis was the most prevalent method of taxation among states that impose a tax; however, not all states that impose the tax require the e-liquid to contain nicotine to be taxable.

The committee solicited testimony from representatives of the Tax Department regarding the preferable method of taxation in terms of ease of administration. Representatives of the Tax Department indicated a tax imposed at a single rate per milliliter of e-liquid at the wholesale level rather than the retail level would be the preferable manner of taxation both for taxpayer reporting and Tax Department administration. There are significant differences between the electronic cigarette industry and traditional tobacco industry, which make it more difficult to administer a tax on electronic cigarettes than traditional cigarettes. The electronic cigarette industry does not have a well-developed distribution system of manufacturers, wholesalers, and retailers. Most electronic cigarette products do not go through the traditional distribution channels. In some cases, such as vape shops, the same entity is the manufacturer, wholesaler, and retailer.

The committee was informed administration of the tax would be simpler and less expensive if the tax is applied at the wholesale level rather than the retail level because the department would be dealing with far fewer companies. Wholesalers also would be better equipped to file the returns and pay the tax than retailers. If a tax is applied at the wholesale level, the department recommended the tax be applied to the liquid at a single rate on a volume basis and be applied to all of the components in the liquid. In the case of a vape shop, the tax should be applied either on all the liquid products the shop purchased and mixed together or on the volume of the final salable product. This manner of taxation would help equalize the tax between the different products available for sale. According to testimony, wholesalers are accustomed to remitting tax on a volume basis for cigarette and tobacco products so wholesalers would be familiar with this method of taxation. Purchases over the Internet and purchases in instances in which there is not an established wholesaler will present administrative challenges for the department.

The committee reviewed a bill draft that would have imposed a per-milliliter excise tax on all e-liquid, regardless of whether the e-liquid contains nicotine. The bill draft sought to develop the administrative framework for the tax and contained a placeholder for the tax rate. The bill draft would have mirrored existing licensing and reporting requirements for sellers of cigarettes or other tobacco products and required dealers and distributors that sell e-liquid to be licensed and keep records of purchases and deliveries of e-liquid. The bill draft would have imposed an excise tax on e-liquid purchased by distributors, or on e-liquid purchased by retailers if the tax had not yet been paid by a distributor. A use tax would have been imposed on e-liquid purchased by a consumer if the tax had not yet been paid by either a distributor or a retailer. The bill draft would have imposed an excise tax on e-liquid inventory purchased before the effective date of the bill draft. The bill draft would have become effective January 1, 2022, to allow the Tax Department adequate time to notify distributors and retailers of the new tax and develop reporting forms.

The committee received testimony from representatives of the vapor industry regarding the imposition of tax on e-liquid. The committee was informed 500,000 people die each year from smoking-related deaths and e-cigarettes have been marketed as a safer alternative to traditional smoking. Representatives of the vapor industry testified the industry is not opposed to additional regulations to help curb youth smoking but increased taxation is not an effective means to reduce youth smoking. Representatives of the vapor industry were not opposed to some degree of tax being applied to vapor products but cautioned against applying excessive or punitive taxes that might result in consumers returning to using potentially more harmful traditional cigarettes or purchasing unregulated black-market products. The committee was cautioned about the potential danger of manufacturers producing a highly concentrated e-liquid nicotine products, which could be dangerous if improperly consumed if a tax is applied on a per-milliliter basis.

The committee received testimony from representatives of Tobacco Free North Dakota regarding the imposition of a tax on vapor products. Representatives recommended a 28 percent tax on vapor products, imposed in a similar manner as tax is imposed on other tobacco products. Data published by the Centers for Disease Control and Prevention (CDC) indicates a \$1.50 increase is needed before a tax will have a positive impact on consumer health. The representatives felt vapor products should be treated like tobacco products to allow the state to license, regulate, monitor, and tax these products because the majority of vapor products contain nicotine. A 2017 North Dakota Community Readiness Survey indicated over 75 percent of North Dakotans surveyed agreed e-cigarettes should be taxed at the same rate as other tobacco products and 57 percent thought the age to purchase electronic cigarettes should be raised to the age of 21. The age at which tobacco products, including vapor products, can be purchased was raised at the federal level from age 18 to age 21 on January 1, 2020.

The committee received information from representatives of the State Department of Health regarding vaping-related illness cases in the state. Data published by the CDC as of January 21, 2020, indicated a total of 2,711 hospitalizations among all 50 states and 60 deaths among 27 states had been reported as a result of e-cigarette or vaping product use-associated lung injury (EVALI). Twenty EVALI cases were reported in the state from September 2019 to January 2020. Most EVALI cases were in individuals ages 18 to 24. The majority of users reporting lung injuries reported using refillable cartridges and black-market products. Nearly all of the EVALI cases required hospitalization, with hospital stays ranging from 1 to 10 days, and 82 percent of hospitalized patients reporting using products that contained tetrahydrocannabinol (THC). The State Department of Health does not endorse vapor products as tobacco cessation devices because data relating to the safety and efficacy of using vapor products for this purpose is insufficient.

The committee received testimony from a representative of the Department of Public Instruction regarding the use of vapor products by minors. Fifty-two percent of students in the state have reported using an electronic vapor product and the number of students who reported using vapor products daily has tripled since 2017. Testimony indicated the most common ways students are obtaining vapor products is by borrowing the products from others or giving individuals money to acquire the products on the students' behalf. The committee was informed efforts by schools to educate students about the risks of vaping are minimal. The committee received testimony from representatives of the City of Bismarck Police indicating the use of vapor products is widespread among middle school and high school students. Testimony indicated the issuance of citations for underage use of tobacco products has very little impact on deterring the use of vapor products by minors. Law enforcement officers expressed skepticism that an increase in the price of vapor products resulting from the imposition of tax would have a discernable impact on reducing vapor product use by minors. Officers noted prevalent employment opportunities provide minors with a large amount of disposable income. Information provided by school officials indicated schools have seen a decrease in the use of tobacco in the past as a result of increased tobacco education. The committee was informed the rate of vapor product use by high school students increased in two states after a vapor product tax was imposed and decreased in four states and the District of Columbia. The committee agreed on the importance of schools working with law enforcement and health department partners to educate students about the risks of certain behaviors.

Committee members expressed mixed opinions about the dangers of vapor products. Committee members agreed regarding the inappropriateness of vapor product use by minors. However, committee members also acknowledged vapor products have assisted many former adult smokers in quitting smoking. Committee members questioned whether the motivation behind imposing a tax would be to raise revenue or deter behavior. The committee reviewed the categories of taxes that generally are classified as "sin taxes," such as alcohol, tobacco, and gaming taxes, and reviewed studies regarding whether increased taxation is effective in deterring behaviors. The committee was informed sin tax revenue in this state generally is directed for deposit in the general fund, rather than earmarked for use in alleviating the harm caused by the activity being taxed. The testimony indicated revenue generated by sin taxes is volatile and should not be relied on as a stable revenue source for reoccurring budget needs. However, committee members raised concerns regarding the potential future costs to the state associated with any unknown, long-term health impacts relating to vaping. The committee was informed sin taxes are disproportionately burdensome on lower-income populations because an individual pays the same amount of tax on the product or service regardless of the individual's income. Committee members indicated the motivation behind imposing a tax would not be simply to raise revenue. Committee members' primary concerns centered around the use of vapor products by minors. As a result, committee members indicated it would be beneficial to address regulatory concerns regarding the distribution and sale of vapor products before taxation issues are addressed. The committee noted public health and regulatory matters might be better addressed by other committees during the 2021 legislative session, as the Taxation Committee possesses less-specialized knowledge in these areas.

## **Conclusions**

The committee makes no recommendations in regard to its study of the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices.

## **CHARITABLE GAMING TAX STUDY**

Section 34 of Senate Bill No. 2015 (2019) directed a study of the state's charitable gaming laws. The Legislative Management directed the Taxation Committee to review whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate. The Judiciary Committee was assigned the remainder of the study directive in the bill, which requires consideration of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters. The study assigned to the Judiciary Committee also required an evaluation of the appropriate limitations, restrictions, and oversight if new games are added; an evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and a review of whether the laws regarding eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate.

### **Background**

Charitable gaming first was permitted under the Constitution of North Dakota in 1976. Section 25 of Article XI of the Constitution of North Dakota allows the Legislative Assembly to:

[A]uthorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited uses.

Legislation enacted by the 1981 Legislative Assembly codified charitable gaming laws in Chapter 53-06.1. Legislation enacted by the 1987 Legislative Assembly codified laws allowing charitable organizations to conduct pari-mutuel horse racing in Chapter 53-06.2. Several changes were made to gaming laws after the 1980s. These changes primarily affected the kinds of organizations that may hold the games, the types of games that may be conducted, the taxation of gaming proceeds, and the administration and enforcement of charitable gaming laws.

### **Taxation of Charitable Gaming Proceeds**

A state tax has been imposed on the proceeds of charitable gaming since 1977. The tax initially was imposed at a rate of 3 percent of adjusted gross proceeds, with revenue allocated to the general fund. The tax was part of the expense limit for the charity. The tax rate was increased to 5 percent in 1979 and was payable from adjusted gross proceeds and not charged against the allowable expenses of the charity.

Before July 1, 2011, the gaming tax structure in Section 53-06.1-12 provided for a sliding scale tax rate that ranged from 5 to 20 percent based upon an organization's adjusted gross proceeds. The intent of the sliding scale tax structure was to discourage large-scale charitable gaming. An additional excise tax of 3 percent also was imposed on the gross proceeds from the sale at retail of pull tabs and bingo cards to final users. No excise tax was imposed on gross proceeds from organizations with pull-tab gross proceeds of \$4,000 or less per calendar quarter. The Attorney General was required to deposit 3 percent of the total taxes collected under Section 53-06.1-12 into a gaming and excise tax allocation fund. The money in this fund, pursuant to legislative appropriations, was to be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations within each city or county.

The 2011 Legislative Assembly passed a significant change to the gaming tax structure. The change consolidated gaming taxes into four separate tax rates, ranging from 1 to 2.5 percent, based upon an organization's quarterly gross proceeds. The gaming tax structure was simplified further in 2013 by legislation that reduced the four separate tax rates to two tax rates. The legislation imposed a tax of 1 percent of gross proceeds on organizations with gross proceeds not exceeding \$1.5 million per quarter and a tax of \$15,000 plus 2.25 percent of gross proceeds exceeding \$1.5 million on organizations with gross proceeds exceeding \$1.5 million per quarter.

Additional background information regarding charitable organizations, administration and enforcement of charitable gaming laws, and federal oversight can be found in the Judiciary Committee Report under Charitable Gaming.

### **Testimony and Committee Considerations**

The committee received information from the Gaming Division of the Attorney General's office regarding charitable gaming activity. The information indicated the Gaming Division regulates gaming conducted by each of the five tribes in the state under the terms of gaming contracts and regulates 325 charitable organizations that conduct charitable gaming at 995 sites in the state. There were 2,582 electronic pull-tab devices operating at 592 sites in the state as of May 30, 2020. The devices are operated by 201 charitable organizations in 210 cities and 48 counties. A record amount of \$84.5 million was wagered on electronic pull-tab devices in the state in May 2020. The Gaming Division anticipates \$1.8 billion in gaming gross proceeds and \$26.8 million in gaming tax during the 2019-21 biennium. The Gaming Division's budget for the 2019-21 biennium was \$3.4 million. Of the \$3.4 million budget amount, \$510,000 is derived

from the gaming tax and passed through the Gaming Division for distribution to political subdivisions as gaming enforcement grants. Gaming tax revenue does not directly fund the operations of the Gaming Division.

The Gaming Division requires additional staff to properly regulate gaming due to the explosive growth of electronic pull tabs. The Gaming Division has 1.5 full-time equivalent (FTE) gaming auditor positions dedicated to regulating gaming at tribal casinos and 6 FTE positions to regulate gaming activities at the other 592 sites where electronic pull-tab devices operate. The Gaming Division's FTE staff was reduced by three during the 2017 legislative session, before the use of electronic pull-tab devices was authorized in the state. Representatives of tribal nations expressed concern regarding the unequal monitoring and regulation of gaming at tribal casinos as compared to the level of monitoring and regulation of electronic pull-tab devices at charitable gaming sites. Representatives of the Spirit Lake Tribe noted the tribe has been impacted negatively by electronic pull-tab devices and the state should have had a larger discussion with the tribes before allowing electronic pull-tab devices to operate in the state. Tribal casino revenues decreased by 40 percent compared to prior year revenues since electronic pull-tab devices began operating in August 2018.

Tribal representatives recommended reducing the number of electronic pull-tab devices operating near tribal casinos and subjecting electronic pull-tab devices to the same inspection and testing standards applied to devices located at tribal casinos. Tribal representatives also advocated for subjecting charitable gaming operators to the same strict requirements for reporting and handling cash and reporting winnings. The committee was informed the state does not impose any requirements for the prevention and detection of money laundering at charitable gaming sites, despite the large amount of cash flowing through those sites. The committee was informed tribal casinos are subject to strict federal anti-money laundering requirements which protect against illegal activities. Tribal representatives expressed support for expanding the Gaming Division's budget to allow additional staff to conduct more robust gaming enforcement activities. The committee was informed nearly 500 electronic pull-tab devices operating in the state with pirated software could have been detected if the gaming devices were subject to the same regular inspections carried out on devices at tribal casinos. A representative from the Gaming Division indicated the number of staff in the Gaming Division would need to double for the division to properly monitor and audit charitable gaming activities under existing laws. According to the testimony, it would cost roughly \$5 million to double the Gaming Division's budget.

The committee received information regarding the number of states that legalized onsite sports betting or online or mobile sports betting and the rate of tax applied in each state that has legalized sports betting. The rate of tax applied to sports betting ranged from a low of 6.75 percent of gaming revenue to a high of 51 percent. The committee was informed sports betting is not legal in North Dakota outside the boundaries of tribal lands, but could be legalized through a constitutional amendment to authorize sports betting or the passage of legislation authorizing sports betting as a permitted game of chance under the state's gaming laws, in which case the net proceeds would need to be devoted to the charitable organization. The committee was informed the tribes will be expanding gaming operations to include sports book betting as a means to supplement the revenue lost as a result of the prevalence of electronic pull-tab devices. A presentation from a representative of the gaming industry indicated there might be a negative impact on state lottery revenue if sports betting is allowed. The committee was advised to place limits on the number of sports betting locations because regulations would need to be enforced at each site. The committee was informed sports betting does not generate a large amount of revenue, but it can prompt other forms of economic growth by drawing customers to bars and taverns. Testimony from charitable organizations indicated charities do not view sports betting as a viable option due to the space and staffing requirements associated with the game.

The committee also received testimony from representatives of charitable gaming organizations regarding recommended prize payout percentages on electronic pull-tab machines. The committee was informed there is no minimum payout percentage and the state set the maximum payout percentage at 90 percent. Charitable organizations indicated the optimal payout percentage for generating the highest amount of revenue is 92.5 percent. A higher payout percentage keeps players entertained and results in them playing longer. Charitable organizations indicated a preference for allowing industry members to determine payout percentages based on the markets in which the industry member operates.

The committee reviewed the taxing structure applied to charitable gaming. Some states impose tax on gross volume, but the majority of states impose tax on adjusted gross revenue, after paying prizes. Most charitable organizations are generating more revenue since electronic pull-tab devices were authorized and many have moved from the lower tier of tax to the higher tier of tax. The committee received a range of suggestions from representatives of charitable gaming organizations regarding changes to the charitable gaming tax structure, including applying tax on adjusted gross income and returning to a more highly tiered tax structure, similar to the one in place in 1989. The committee was informed the tiered structure would serve to apply a higher tax to charities with higher revenue. Proponents of this change indicated filing returns based on multiple tiers would not carry the burdens experienced in the past because charities can now file returns electronically. A second option entailed applying a tiered tax rate to all games except pull tabs and limiting the rate of tax to a level that would maintain, rather than increase, collections.

The committee also received a recommendation to create a more simplified tax calculated on gross proceeds less cash prizes and merchandize, which would eliminate tax on losses and create a more fair and balanced system. Lastly, the committee was presented with the option of retaining the current tax structure but lowering the rate of tax to the minimum rate required to adequately fund gaming enforcement and addiction services. Charities indicated a preference for returning any excess revenue to charitable organizations, rather than depositing excess revenue in the general fund. Charities were strongly in favor of increasing the funding allocated to the Gaming Division and were not opposed to providing funding for gambling addiction and treatment services, as long as the funding increases are not derived from an increase in tax. The committee was informed gambling prevention and treatment is funded with revenue from tribal casinos and the state lottery, rather than with revenue from charitable gaming.

Committee members recognized additional funds might be needed for gambling prevention and treatment in light of the explosive growth of gaming in the state. Committee members also acknowledged there should be some correlation between the growth in gaming activities and the growth in the number of staff available to regulate gaming activities. The Gaming Division will be seeking increased funding during the 2021 legislative session for additional staff and to add licensing, distribution, and manufacturing components to the online filing and payment software funded by the 2019 Legislative Assembly. Committee members agreed any changes to the charitable gaming laws required due to the recent and substantial increase in charitable gaming activity should be addressed as part of a larger policy discussion by the full Legislative Assembly.

### **Conclusions**

The committee makes no recommendations in regard to its study of whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate.

## **SPECIAL ASSESSMENT REVENUE REPLACEMENT STUDY**

Section 1 of House Bill No. 1474 (2019) directed a study of options for replacing revenue generated by special assessments with revenue from an alternative local funding source. The study required a review of the purposes for which special assessments are imposed, the revenue generated from the imposition of special assessments, local revenue sources that could be used as an alternative to imposing special assessments, and the manner in which fees for an alternative local revenue source would be calculated and imposed as compared to the manner in which special assessments are calculated and imposed. As introduced, the bill would have provided authority for a city or county to levy an infrastructure tax in lieu of special assessments on all residential and commercial utility bills for payment of infrastructure maintenance costs.

### **Background**

Cities were the first political subdivision in North Dakota to receive authority to levy special assessments for improvements. Cities have had authority to levy special assessments since 1897, and as a result the statutory provisions relating to special assessments in cities are the oldest and most detailed. Recreation service districts were the second political subdivision to receive special assessment levy authority in 1975, followed by water resource districts in 1981, counties in 1983, and townships in 2001.

Several chapters of Title 40 govern improvements by special assessment in cities. Recreation service districts and counties glean authority to levy special assessments for improvements by adopting the provisions relating to cities by reference. Special assessment levy authority and related procedures for water resource districts are contained in Chapter 61-16.1. Township special assessment levy authority is governed by an abbreviated statutory procedure in Chapter 58-18.

### **Purposes for Which Special Assessments Are Imposed**

Pursuant to Section 40-22-01, a city may defray the expenses related to a number of improvements by levying special assessments. Improvement costs for which special assessments may be levied include costs for new water supply or sewage systems, or the extension or replacement of existing systems; improvements to a municipal street system; improvements to boulevards or other public places and the maintenance of those improvements; the acquisition of land and easements for flood protection purposes and the construction of necessary works; and the acquisition or leasing of property and easements for parking lots, ramps, and garages and associated construction costs. A city also may establish a special assessment district pursuant to Chapter 40-22.1 for the promotion of business activity and new business development.

The board of county commissioners may initiate a special assessment district and levy special assessments for improvements within a defined area outside the limits of an incorporated city. Pursuant to Section 11-11-55.1, a county is given all the authority and duties pertaining to special assessments which belong to cities in Chapters 40-22 through 40-28.



Townships may defray expenses of improvements through special assessment districts pursuant to Chapter 58-18. The board of township supervisors may create an improvement district upon petition of at least 60 percent of the property owners in a proposed improvement district area. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project.

A recreation service district may levy special assessments to provide services, including police protection, sewer and water, garbage removal, and public road construction and maintenance. Pursuant to Section 11-28.2-04.1, a recreation service district is deemed to be a "municipality" for purposes of the special assessment provisions in Chapters 40-22 through 40-27.

Chapter 61-16.1 governs the administration of special assessments by water resource districts. Pursuant to Section 61-16.1-15, a water resource board may provide for the cost of construction, alteration, repair, operation, and maintenance of a water resource district project through issuance of improvement warrants or with funds raised by special assessments, a general tax levy, issuance of revenue bonds, or a combination of these methods.

### **Manner in Which Special Assessments Are Calculated**

Section 40-23-01 requires the executive officer of a city to appoint three "reputable residents and freeholders" of the city to the city's special assessment commission. Pursuant to Section 40-23-07, the special assessment commission is required to determine the lots and parcels of property that will benefit from the improvement and the amount in which each lot and parcel will be benefited. The commission is required to assess against each lot and parcel a fair portion of the total cost of the improvement, which may not exceed the amount each property will benefit from the improvement. As an alternative, Chapter 40-23.1 provides the city governing body may assess benefits against property on a per-square-foot basis and considering the distance of the property from the marginal line of the public way or area improved.

Sections 40-23-09 and 40-23.1-07 require the special assessment commission or the city auditor to prepare a complete list of benefits and assessments showing each lot, tract, or parcel benefited by the improvement and the amount assessed against it. Section 40-23-25 requires the special assessment commission to prepare a list of estimated future assessments on property presently located outside the corporate limits of the city, but likely to be annexed, which the commission determines is potentially benefited by the improvement. Sections 40-23-10 and 40-23.1-08 require the special assessment commission or the city auditor to publish the assessment list in the official newspaper of the city once each week for 2 consecutive weeks and include notice of the time and place the commission or the city auditor will meet to hear objections to assessments by any interested party. The special assessment commission or the city auditor may alter assessments at the hearing, as may be just or necessary, pursuant to Sections 40-23-11 and 40-23.1-09. Sections 40-23-07 and 40-23.1-06 provide property of political subdivisions is not exempt from special assessments.

Any person still aggrieved after consideration by the commission or city auditor may file a written notice of appeal stating the grounds for the appeal pursuant to Sections 40-23-14 and 40-23.1-12. At the regular meeting of the city governing body at which the assessment list is to be acted upon, in accordance with Sections 40-23-15 and 40-23.1-13, any person that has appealed may appear and present the reasons why the action of the commission or city auditor should not be approved. The governing body of the city may increase or diminish any assessment as it deems just.

### **Testimony and Committee Considerations**

The committee reviewed Engrossed House Bill No. 1474 (2019), which contains the language of the bill before it was amended into this study. The bill was reviewed as a means to solicit feedback on special assessment revenue replacement options from city representatives. The engrossed bill would have allowed home rule counties and cities to elect to levy an infrastructure tax in lieu of imposing general special assessments and in addition to levying greenfield special assessments. The engrossed bill defined "general special assessments" as assessments for maintaining existing roads and infrastructure and assessments for the construction or repair of arterial roads that benefit the entire community and defined "greenfield special assessments" as assessments for infrastructure costs associated with developing agricultural or other undeveloped property. The committee was informed the language in the engrossed bill was a response to Senate Bill No. 2326 (2017), which prevents a city from seeking voter approval for any funding mechanism that was not present in a city's home rule charter before August 1, 2017.

The committee received comments from several city representatives regarding potential special assessment revenue replacement options and concerns with the concepts provided in Engrossed House Bill No. 1474 (2019). City representatives identified several options for subsidizing or replacing special assessment revenue. Funding options included using revenue from property tax, sales tax, highway user tax, special district fees or surcharges, impact or development fees, federal funds, and grants. It was noted cities also can encourage developers to pay the upfront costs of new developments. Special assessments costs in Fargo are being subsidized with state funds provided by House Bill No. 1066 (2019), commonly referred to as the prairie dog bill. Subsidizing special assessment costs with state funding

allowed the city to cap the amount assessed to property owners for sanitary sewer replacement at \$40 per front foot and reduce the special assessment costs for paving by 50 percent for single family and small multifamily residences and 25 percent for commercial or mixed-use properties. The city also used state funds to eliminate special assessments for arterial reconstruction costs for single family residences that do not front an arterial roadway. City representatives expressed various concerns with the revenue replacement structure provided in Engrossed House Bill No. 1474. City representatives noted communities might struggle with implementing an infrastructure tax if the tax does not address the payment of existing special assessment debt. City representatives recommended clarification that the county-imposed infrastructure tax would appear on a county-issued utility bill and a city-imposed infrastructure tax would appear on a city-issued utility bill. City representatives voiced opposition to completely eliminating special assessments and viewed a utility tax as a supplemental funding source to reduce all or a portion of special assessment costs relating to infrastructure maintenance.

The committee received information from representatives of the Bismarck-Mandan Chamber of Commerce and the Bismarck-Mandan Development Association regarding the joint task force meetings held by the City of Bismarck's Infrastructure Task Force and Special Assessment Task Force. The joint task force met to review the process for levying special assessments and develop an alternative funding source for infrastructure. The recommendations resulting from the joint task force's review included requiring developers to pay the upfront costs of new greenfield development and imposing a street utility tax to cover the costs of infrastructure maintenance projects. The committee was informed, if approved by the voters, a street utility tax would be added to each residential and commercial utility bill and the revenue from the tax would be placed in a street maintenance fund. Revenue in the street maintenance fund would be used for infrastructure maintenance projects in the city or county levying the tax.

The committee received testimony indicating the frequency in which certain areas would receive improvements funded by the street utility tax would depend on the conditions in each area. A city or county still could levy special assessments for costs associated with things like sewer and surface water management and new infrastructure development. The amount of the street utility tax was estimated at \$25 per month for each residential utility bill and \$65 per month for each 10,000 square feet of commercial property. The task force arrived at the tax rate by dividing the amount of special assessments to be assessed for street rehabilitation work by the number of residential and commercial units in the city. The fee did not include costs associated with paying off any pre-existing special assessment debt or costs associated with new infrastructure development. There was \$120 million in outstanding special assessment debt in Bismarck at the time the task force calculated the street utility tax rate, which amounts to \$1.5 million in annual debt payments. The street utility tax is estimated to generate \$17 million per year, which is the amount that otherwise would be special assessed for street maintenance projects.

Committee members expressed concerns regarding the disconnect between those receiving the benefit of an improvement and those paying for the improvement. Committee members noted the key concept behind special assessments is a fair distribution of benefits. Special assessments are based on the value of the benefit received by the property as the result of an improvement. A street utility tax would replace a system in which only benefited properties are paying for improvements with one in which all properties would be paying for improvements, even if some properties never benefit from the improvement. Other committee members were less concerned with the lack of direct connection between benefit and burden and viewed citywide infrastructure maintenance as indirectly benefiting all citizens. The tax was likened to the tax paid by all property owners for the support of schools, regardless of whether the property owner has children attending school.

Concerns also were raised regarding an individual being subjected to multiple layers of taxation. An individual potentially could be subject to making payments on existing special assessment debt previously acquired, plus paying a street utility tax and any new amounts special assessed for new infrastructure costs or sewer or water management costs. Concerns were raised regarding the burden the new tax may place on certain residents, such as seniors living on a fixed income, whose properties may otherwise not have been subject to special assessments. Committee members also expressed concerns regarding the costs and difficulties associated with switching from one assessment method to another and the transparency provided to voters voting on allowing a street utility tax. Committee members questioned the manner in which the street utility tax question would be presented on the ballot and expressed concerns that a ballot question granting blanket authority for a city or county to levy a street utility tax without specifying the rate of the tax could subject property owners to increasing street utility fees in the future. Committee members did not seek to prohibit cities and counties from generating the necessary revenue for maintenance and improvement costs, but wanted to ensure taxpayers were receiving adequate protections. Committee members noted the presentations from various city representatives indicated the costs of providing local development and maintenance will be the same, regardless of the method used to fund the costs.

## Conclusions

The committee makes no recommendations in regard to its study of options for replacing revenue generated by special assessments with revenue from an alternative local funding source.

## ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Section 54-35-26, enacted by Senate Bill No. 2057 (2015), provides for the review of a specified list of economic development tax incentives and requires each incentive be reviewed at least once every 6 years. The Legislative Management selected the Taxation Committee to review tax incentives during the 2019-20 interim.

## Background

The practice of legislatively mandating the periodic review of economic development tax incentives began to gain popularity following the 2007-09 recession. As states continued to look at austerity options and ways to grow economies, reviewing tax incentives was viewed as sound public policy to ensure state dollars were being spent in a prudent and effective manner.

In 2012 The Pew Charitable Trusts (Pew) began tracking the progress states were making in evaluating tax incentives and published a report entitled *Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth*. The report identified states leading the way in evaluating the effectiveness of tax incentives, states meeting some of the criteria for effective evaluations, and states not meeting any criteria in terms of the scope or quantity of evaluations. Pew's 2019 report identifies 16 states leading the way in evaluating incentives, 15 states making progress in evaluating incentives, and 19 states trailing behind in evaluating incentives. The report describes the leading states as those with well-designed plans for regular reviews, experience in producing quality evaluations that measure economic impacts, and a process for applying the results of evaluations to inform policy decisions. North Dakota is identified as one of the states leading the way in evaluating incentives.

## Tax Incentive Evaluation Law

Section 54-35-26 directs the review of specified economic development tax incentives by an interim committee selected by the Legislative Management. The review entails an assessment of whether each listed incentive is serving the purposes for which it was enacted in a cost-effective and equitable manner. The statute requires each incentive be reviewed at least once every 6 years and provides the following eight items that may be considered when evaluating incentives:

1. The extent of achievement of the goals of the incentive and whether unintended consequences have developed in its application;
2. Whether the design and application of the incentive can be improved;
3. The extent of complementary or duplicative effects of other incentives or governmental programs;
4. Whether the incentive has a positive influence on business behavior or rewards business behavior that is likely to have occurred without the incentive;
5. The effect of the incentive on the state economy, including the extent of primary sector operation of the recipient and any competitive disadvantage imposed or benefit conferred on other state businesses, any benefit or burden created for local government, and the extent of the incentive's benefit that flows to out-of-state concerns;
6. The employment opportunities generated by the incentive and the extent those represent career opportunities;
7. Whether the incentive is the most effective use of state resources to achieve desired goals; and
8. If the committee's analysis of the incentive is constrained by lack of data, whether statutory or administrative changes should be made to improve collection and availability of data.

## Interim Committee Review of Incentives

The first interim of incentive evaluations was conducted by the Political Subdivision Taxation Committee during the 2015-16 interim. The committee selected 14 incentives to review from the incentives listed in Section 54-35-26 and an additional four incentives not listed in Section 54-35-26. Legislation resulting from the committee's review led to a uniform definition of "primary sector business," statutory changes to the angel fund credit, and the elimination of the wage and salary income tax credit, the microbusiness income tax credit, and the certified nonprofit development corporation income tax credit. The committee's review also resulted in Senate Bill No. 2044 (2017), which led to the Bank of North Dakota's acquisition of dynamic revenue analysis software from Regional Economic Models Incorporated (REMI) and the 2017-18 interim committee's ability to request incentive evaluations generated using the software for incentives selected for review during the 2017-18 interim.

The second interim of incentive evaluations was conducted by the Taxation Committee during the 2017-18 interim. The committee selected seven incentives to review from the list in Section 54-35-26. Six of the seven incentives selected for review included incentives selected during the 2015-16 interim, which the Political Subdivision Taxation Committee had insufficient time to analyze. The Taxation Committee selected the new jobs credit from income tax withholding, the internship program credit, the workforce recruitment credit, the research expense credit, new or expanding business exemptions, renaissance zone tax credits and exemptions, and development or renewal area incentives, including tax increment financing incentives. The committee declined to recommend any changes to the incentives selected for review.

The third interim of incentive evaluations, which concluded the first 6-year incentive review cycle, was conducted by the Taxation Committee during the 2019-20 interim. The committee selected the remaining seven incentives in Section 54-35-26 which had not been reviewed during the previous 2 interims. These incentives included fuel tax refunds for certain users; sales tax exemptions for manufacturing and recycling machinery and equipment, materials used to construct a fertilizer or chemical processing facility, materials used to construct or expand a carbon dioxide capture and injection system, and enterprise information technology equipment and software used in a qualified data center; oil and gas gross production and oil extraction tax exemptions; and coal severance and conversion tax exemptions. The following table summarizes the incentives reviewed during each interim in the first 6-year incentive review cycle:

<b>First 6-Year Review Cycle</b>		
<b>2015-16 Interim</b>	<b>2017-18 Interim</b>	<b>2019-20 Interim</b>
Agricultural commodity processing facility investment tax credit	Renaissance zone credits and exemptions	Fuel tax refunds
Angel fund investment tax credit	Research expense credit	Manufacturing and recycling equipment sales tax exemption
Biodiesel fuel credits	Internship program credit	Fertilizer or chemical processing facility sales tax exemption
Manufacturing automation tax credit	Workforce recruitment credit	Carbon dioxide capture and injection sales tax exemption
Microbusiness income tax credit	New or expanding business exemptions	Qualified data center sales tax exemption
Seed capital investment tax credit	New jobs credit from income tax withholding	Oil and gas gross production and oil extraction tax exemptions
Soybean or canola crushing facility credit	Development or renewal area incentives	Coal severance and conversion tax exemptions
Wage and salary credit		
Certified nonprofit development corporation investment tax credit		
Electrical generating facilities sales tax exemption		
Geothermal, solar, wind, and biomass energy device credit		
Telecommunications infrastructure sales tax exemption		

The committee received background information for each of the selected incentives, which provided an explanation of the incentive, the perceived intent of the Legislative Assembly in creating or altering each incentive, and the data and testimony required to effectively review each incentive. Data regarding the number of claimants and the amounts claimed for each incentive was provided by the Tax Department. The committee also received a presentation on the best practices for evaluating the effectiveness of economic development tax incentives. The committee received information indicating the purpose of incentives is not only to secure a deal, but also should be used to achieve a community's larger economic development goals. The committee was informed companies are seeking well-designed incentive programs that work for both business and the community to drive long-term, mutually beneficial, economic development projects. Well-designed incentives have clear and measurable goals, provide tax breaks after certain benchmarks or commitments have been met, set caps on outlays, and include built-in reporting mechanisms. The committee concluded the first cycle of incentive evaluations has been very worthwhile.

### **Fuel Tax Refunds for Certain Users**

#### **Imposition of Fuel Tax**

A 23 cent per gallon tax is imposed on motor vehicle fuels, which includes gasoline and gasohol; and on special fuels, which includes diesel, kerosene, compressed natural gas, liquefied petroleum gas, and other fuels except gasoline, gasohol, or aviation fuels pursuant to Chapters 57-43.1 and 57-43.2. Dyed diesel fuel and special fuel other than diesel fuel which is sold for use in unlicensed machinery used for agricultural, industrial, or railroad purposes is exempt from

the 23 cent per gallon special fuels tax and is instead subject to a 4 cent per gallon excise tax, with the exception of propane, which is subject to an excise tax of 2 percent. An 8 cent per gallon tax is imposed on aviation fuels pursuant to Chapter 57-43.3. Tax remitted by certain users and on fuel purchased for specified uses is subject to refund.

### **Explanation of Fuel Refunds for Specified Users**

The operator of an emergency medical services operation who purchases motor vehicle fuel, special fuel, or aviation fuel for use in a licensed emergency medical services operation may claim a refund of tax paid. Tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, and maintenance of a public road or airport also is subject to refund. A Native American may claim a refund of motor vehicle fuel or special fuel tax paid if the fuel was purchased from a retail fuel dealer located on the reservation where the Native American is an enrolled member, and in which a motor fuel agreement is not in place, and the fuel was delivered to the Native American purchaser on that reservation. Refunds also are allowed to fuel resellers who sold fuel on which motor vehicle fuel, special fuel, or aviation fuel tax was paid to an agency of the federal government.

### **Perceived Goals in Creating or Altering the Refund Provisions for Specified Users**

The perceived goal of providing fuel tax refunds for specified users is to reduce the tax burden for those users. The first fuel tax refund provisions provided for specified users were enacted by House Bill No. 360 (1937). The provisions allowed for refunds of the tax paid on motor vehicle fuel purchased by the state or a political subdivision for use in construction, reconstruction, or maintenance of a public road or airport. These refund provisions were followed by the enactment of refund provisions for the tax paid on motor vehicle fuel, special fuel, and aviation fuel for resellers who sold fuel on which tax was paid to an agency of the federal government by Senate Bill No. 2177 (1999). Refund provisions providing a motor vehicle fuel and special fuel tax refund for fuel purchased by a Native American from a retail fuel dealer located on the reservation where the Native American is an enrolled member was enacted by Senate Bill No. 2012 (2005). The final refund provision provided for specified users was enacted by House Bill No. 1138 (2007), which provided refunds for motor vehicle fuel, special fuel, and aviation fuel tax paid on fuel purchased by the operator of an emergency medical services operation. The perceived goal of the Legislative Assembly in enacting the fuel tax refund was to lower the operating costs of emergency medical services operations to keep the operations economically viable, especially in rural areas.

### **Explanation of Fuel Refunds for Specified Uses**

The tax paid on motor vehicle fuel purchased for use in nonlicensed equipment used for agricultural or industrial purposes is subject to refund. The amount of tax refunded on motor fuel purchased for industrial purposes must be reduced by one-half cent per gallon for deposit in the agricultural products utilization fund. Tax paid on special fuel purchased for use in a refrigeration unit that has a separate supply tank on a truck or trailer is subject to refund. The amount of special fuel tax refunded on fuel purchased for use in a refrigeration unit must be reduced by four cents per gallon to account for the payment of special fuel excise tax. Refunds also are allowed on motor vehicle fuel, special fuel, or aviation fuel if the fuel is removed for sale, resale, or use in another state that requires payment of tax on the fuel.

### **Perceived Goals in Creating or Altering the Refund Provisions for Specified Uses**

The perceived goal of providing fuel tax refunds for specified uses is to lower the tax burden applied to those specified uses. Refund provisions for tax paid on motor vehicle fuel purchased for use in nonlicensed equipment for industrial or agricultural purposes have been available since the motor vehicle fuel tax law was first enacted by an initiated measure approved by the voters at a statewide election held on June 30, 1926. The amount withheld from the tax refunded on fuel purchased for industrial purposes was set at one-half of one cent per gallon in 1983. The amount withheld from the tax refunded on fuel purchased for agricultural purposes was amended several times over the years until the deduction was eliminated in 2015.

Refund provisions for tax paid on motor vehicle fuel or special fuel removed for sale, resale, or use in another state were first enacted by House Bill No. 1164 (1975). The refund provisions were amended in 1997 to provide time limits for claiming the refund and require a claimant to include proof the fuel purchased for sale or resale in another state was reported to the taxing agency in the claimant's refund application materials. An aviation fuel tax refund for fuel removed for sale, resale, or use in another state was enacted by Senate Bill No. 2177 (1999). The special fuel tax refund provided for consumers who purchase special fuel for use in a refrigeration unit was enacted by Senate Bill No. 2224 (2009). The perceived goal of the Legislative Assembly in offering the refund was to allow drivers refueling at truck stops at which dyed fuel was not available to fill their refrigeration units with clear fuel and receive a refund on the amount of tax paid in excess of the tax that otherwise would have been paid on the dyed fuel.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the amount of fuel tax refunded in fiscal years 2015 to 2019. A total of \$293,465 in motor vehicle fuel tax, \$115,302 in special fuel tax, and \$7,296 in aviation fuel tax was refunded in fiscal year 2019. The highest amount of tax refunded by category of refund

was for motor vehicle fuel used for agricultural purposes. The amount of motor vehicle fuel tax refunded for fuel used for agricultural purposes was \$148,447 in 2019. The committee reviewed historic fuel tax rate changes and historic fuel prices and effective fuel tax rates. Some committee members questioned whether it would be more beneficial to lower the fuel tax rate for all consumers, rather than provide such an extensive list of refund provisions, once the cost of wages and benefits are calculated for the employees required to process refund requests. Other committee members expressed concern that the fuel tax rate might be too low considering the existing gap between transportation funding revenue and transportation fund needs.

The motor vehicle and special fuel tax rate was last increased to 23 cents from 21 cents in 2005. A one-cent fuel tax rate increase would generate approximately \$7.4 million in tax revenue per year. The committee received detailed information from representatives of the Department of Transportation and the Upper Great Plains Transportation Institute regarding fuel tax revenue and distributions and long-term transportation funding needs. The committee acknowledged steps likely would need to be taken by the 2021 Legislative Assembly to address transportation funding needs but did not discuss any recommendations to modify or eliminate the fuel tax refund provisions selected for study to address funding needs. The committee did not receive testimony from interested parties in support of retaining, eliminating, or modifying fuel tax refund provisions. The committee indicated fuel tax refund provisions are operating as intended.

## **Conclusions**

The committee makes no recommendation regarding fuel tax refund provisions.

## **Manufacturing and Recycling Sales Tax Exemption**

### **Explanation of the Exemption**

Section 57-39.2-04.3 provides a sales tax exemption for machinery or equipment used directly in manufacturing or recycling tangible personal property. For purposes of the exemption, manufacturing includes the meaning normally ascribed to the term and the processing of agricultural products but does not include mining or refining activities, oil and gas extraction, or the generation of electricity. Recycling is defined as the collection or recovery of materials that otherwise would be waste and conversion of those materials to a product for sale or a raw material for use in manufacturing. To qualify for the exemption, the machinery or equipment must be used in a new manufacturing plant or recycling facility or used to create a physical or economic expansion of an existing plant or facility. An economic expansion is classified as an increase in production volume, employment, or the types of products that can be manufactured or recycled.

### **Perceived Goals in Creating and Altering the Exemption**

Provisions of the manufacturing and recycling sales tax exemption were first enacted by House Bill No. 1048 (1991). As originally enacted, the exemption applied only to manufacturing machinery and equipment used directly in manufacturing tangible personal property or processing agricultural products. The exemption replaced an existing 3 percent reduced sales tax rate on these items. The perceived goal of the Legislative Assembly in creating the exemption was to attract new manufacturing plants to the state and encourage the expansion of existing manufacturing plants. The exemption was viewed as a driver for job creation and increased income tax collections as a result of manufacturing plant construction and expansion.

The exemption was expanded in 1993 to apply to machinery or equipment used directly in a new recycling facility or in the physical or economic expansion of an existing recycling facility. The definition of machinery also was expanded to include environmental control equipment and devices purchased or constructed at any point from the initial stages of manufacturing through the completion and packaging of an end product. The definition of machinery was further expanded in 1994 to include computer equipment that controls or monitors the function of machinery used in the manufacturing process and devices used through the completion of the product, including packaging and all processes before the completed product is transported from the plant. Machinery or equipment was required be used in the manufacturing process at least 50 percent of the time to qualify for the exemption. The definition of "used directly" also was expanded to include machinery and equipment used to conduct research, and development and design activities related to the manufacturing process of the plant. The definition of manufacturing for purposes of the credit also was temporarily expanded in 1999 to include the refining of crude oil through July 31, 2002. The final change to the exemption was made in 2015 to allow a customer to qualify for an exemption at the time of purchase or apply for a refund of sales tax paid on a mold purchased by a customer and used directly by a manufacturer in the manufacturing process.

### **Testimony and Committee Considerations**

The committee received data from a representative of the Tax Department regarding the number of claimants and the amount exempted in relation to the manufacturing and recycling sales tax exemption. The data indicated an aggregate total of \$15,915,697 in sales tax was not collected from 255 taxpayers from fiscal years 2015 to 2019 as a result of the manufacturing sales tax exemption, and \$420,371 was not collected from 32 taxpayers as a result of the recycling sales tax exemption during the same period. The committee did not receive testimony from interested parties

in support of retaining, eliminating, or modifying the sales tax exemption. The committee did not identify any concerns relating to the exemption or ways in which the exemption could be improved. The committee indicated the exemption is operating as intended.

## **Conclusions**

The committee makes no recommendation regarding the manufacturing and recycling sales tax exemption.

### **Fertilizer or Chemical Processing Facility Sales Tax Exemption**

#### **Explanation of the Exemption**

Sections 57-39.2-04.15 and 57-40.2-03.3 provide a sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility. For purposes of the exemption, a fertilizer or chemical processing facility is a processing plant that produces for retail or wholesale a fertilizer, chemical, or chemical derivative from natural gas, natural gas liquids, or crude oil components. The sales tax exemption applies to sales of personal property used to construct a fertilizer or chemical processing facility or any component integral to the facility. A component integral to the facility may be owned directly or indirectly by the facility or an unrelated third party and must be located at the site of the facility and integral to the facility's processing of fertilizers or chemicals. The tangible personal property must be incorporated in the facility or used in the construction process to the point of having no residual economic value to qualify for the exemption. Before July 1, 2023, the owner of a fertilizer or chemical processing plant must receive from the Department of Environmental Quality an air quality permit or notice that the air quality permit is complete and provide the documentation to the Tax Department to qualify for the exemption.

#### **Perceived Goals in Creating and Altering the Exemption**

The sales and use tax exemption for materials used to construct a fertilizer or chemical processing facility was enacted by Senate Bill No. 2035 (2015). The perceived goal of the Legislative Assembly in creating the exemption was to encourage economic diversification by incentivizing new industries. Various items were discussed in support of the exemption, including the state's need to compete with other states to attract and develop new industries, the benefits of converting natural gas to fertilizer to reduce flaring and provide a local fertilizer market for farmers, the opportunity to add value to existing energy resources by converting ethane gas into polyethylene, and the creation of new jobs and an expanded tax base. The incentive also was viewed as a tool to lessen the impact of other barriers to doing business in this state, such as the cold climate, limited workforce, and rural infrastructure and transportation issues.

#### **Testimony and Committee Considerations**

Testimony received from a representative of the Tax Department indicated no fertilizer or chemical processing facility sales tax exemptions have been claimed since the exemption was enacted in 2015. Testimony indicated the exemption had not been claimed because the exemption was specific to the feed stock of a certain type of plant that was not yet present in the state. The committee did not receive testimony from interested parties in support of retaining, eliminating, or modifying the sales tax exemption. The committee did not identify any concerns relating to the exemption or ways in which the exemption could be improved. The committee did not indicate a desire to eliminate the exemption as a result of the exemption's lack of use.

## **Conclusions**

The committee makes no recommendation regarding the fertilizer or chemical processing facility sales tax exemption.

### **Carbon Dioxide Capture and Injection Sales Tax Exemption**

#### **Explanation of the Exemption**

Sections 57-39.2-04.14 and 57-40.2-03.3 provide a sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. To qualify for the exemption, the tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas. The purchase of replacement equipment does not qualify for the exemption unless the replacement creates an expansion of the system.

#### **Perceived Goals in Creating and Altering the Exemption**

The sales and use tax exemption for tangible personal property used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for use in enhanced recovery of oil or natural gas was created by Senate Bill No. 2318 (2015). The perceived goal of the Legislative Assembly in creating the exemption was to provide a green incentive aimed at encouraging investment in costly carbon dioxide capture and injection systems, reducing carbon dioxide emissions, and increasing oil and gas recovery. The exemption also was viewed as a tool to increase jobs and income tax collections as a result of the construction required to complete systems used to compress, gather, collect, store, transport, or inject carbon dioxide. The only changes to the exemption following its enactment were

made in 2019, which expanded the exemption to materials used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage.

### **Testimony and Committee Considerations**

Testimony received from a representative of the Tax Department indicated no carbon dioxide capture or injection sales tax exemptions have been claimed since the exemption was enacted in 2015. Testimony indicated the exemption had not been claimed because most projects associated with the exemption are in the feed study and engineering early project stages. The committee did not receive testimony from interested parties in support of retaining, eliminating, or modifying the sales tax exemption. The committee did not identify any concerns relating to the exemption or ways in which the exemption could be improved. The committee did not indicate a desire to eliminate the incentive as a result of the incentive's lack of use.

### **Conclusions**

The committee makes no recommendation regarding the carbon dioxide capture and injection sales tax exemption.

## **Qualified Data Center Sales Tax Exemption**

### **Explanation of the Exemption**

Section 57-39.2-04.13 provides a sales and use tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center. For purposes of the exemption, a qualified data center is a facility that serves as a centralized repository for the storage, management, and dissemination of electronic data and information, located on a single parcel or contiguous parcels, comprised of one or more buildings consisting of a minimum aggregate amount of 16,000 square feet, and which is newly constructed or substantially refurbished after December 31, 2014. The data center must be certified by the Tax Commissioner as a qualified data center and have an uninterrupted power supply, generator backup, or both; a sophisticated fire suppression and prevention system; and enhanced security features. Equipment or software must be incorporated into or physically located within the qualified data center to qualify for the exemption. The exemption includes purchases of upgraded or replacement equipment or software. The exemption is limited to the first four facilities approved by the Tax Commissioner as qualified data centers and expires on January 1, 2021.

### **Perceived Goals in Creating and Altering the Exemption**

The sales and use tax exemption for enterprise information technology equipment and computer software used in a qualified data center was enacted by House Bill No. 1089 (2015). The perceived goal of the Legislative Assembly in creating the exemption was to help diversify the state's economy by creating a more attractive tax environment to attract data centers to this state. Surrounding states that offered a similar tax incentive were successful in attracting data centers, so the exemption was viewed as a means to enhance the state's ability to attract data centers when coupled with the state's cold weather and abundant sources of electricity. The addition of data centers also was thought to lead to the expansion of other information technology businesses and data-intensive industries.

### **Testimony and Committee Considerations**

The committee received data from a representative of the Tax Department regarding the number of claimants and the amount exempted in relation to the qualified data center sales tax exemption. The data indicated an aggregate total of \$975,409 in sales tax was not collected from the four qualified data centers from fiscal years 2015 to 2019 as a result of the sales tax exemption. The committee was informed the sales tax exemption for qualified data centers is exhausted because it is limited by statute to the first four claimants. The committee did not receive testimony from interested parties in support of retaining, eliminating, or modifying the sales tax exemption. The committee did not identify any concerns relating to the exemption or express an interest in repealing the exemption or expanding the scope of the exemption to apply to additional qualified data centers.

### **Conclusions**

The committee makes no recommendation regarding the sales tax exemption for qualified data centers.

## **Oil and Gas Gross Production and Oil Extraction Tax Exemptions**

### **Imposition of Oil and Gas Gross Production Tax**

Pursuant to Chapter 57-51, a gross production tax of 5 percent of the gross value at the well is levied upon oil produced in the state. The gross production tax levied upon gas produced in the state is calculated by multiplying taxable production by an annually adjusted flat rate per thousand cubic feet.

### **Explanation of Gross Production Exemptions**

Production exempt from gross production tax includes:



- Gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe.
- Shallow gas produced during the first 24 months of production following the date gas was first sold from a shallow gas well and gas produced from a shallow gas well during testing, but prior to well completion, or during connection to a pipeline.
- Gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well.
- Gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption.

### **Perceived Goals in Creating and Altering Gross Production Exemptions**

The exemption provided in Section 57-51-02 for gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding, or from an interest held by an organized Indian tribe was enacted by Senate Bill No. 41 (1953). The exemption provided in Section 57-51-02.4, which exempts shallow gas produced from a new or recompleted shallow gas well during the first 24 months of production, was enacted by House Bill No. 1145 (2003). The perceived goal of the Legislative Assembly in creating the exemption was to attract investment in the state's natural resources by encouraging gas well production. The exemption provided in Section 57-51-02.5 for gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well, was enacted by Senate Bill No. 2413 (2009). The perceived goal of the Legislative Assembly in creating the exemption was to reduce flaring and generate electricity from gas that might otherwise be wasted. The exemption provided in Section 57-51-02.6 for gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption was enacted by House Bill No. 1134 (2013). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of gas that might otherwise be flared.

### **Imposition of Oil Extraction Tax**

The oil extraction tax is levied on the extraction of oil from the earth pursuant to Chapter 57-51.1. The oil extraction tax rate is 5 percent, subject to a 1 percent increase if the average price of a barrel of crude oil exceeds \$90 for 3 consecutive months.

### **Explanation of Oil Extraction Exemptions**

Production exempt from oil extraction tax includes:

- Liquids produced from a collection system employed to avoid flaring, which are exempt for a period of 2 years and 30 days from the time of first production.
- Production that is exempt from the gross production tax imposed by Chapter 57-51.
- Production from stripper well property or an individual stripper well.
- Incremental production from a secondary recovery project for 5 years from the date incremental production begins.
- Incremental production from a tertiary recovery project for 10 years from the date incremental production begins, or 20 years from the date incremental production begins or certified injection begins if the project injects more than 50 percent carbon dioxide produced from coal and is located outside the Bakken or Three Forks Formations.
- Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks Formations for 5 years from the date incremental production begins, or 10 years from the date incremental production begins or certified injection begins if the project injects more than 50 percent carbon dioxide produced from coal and is located within the Bakken or Three Forks Formations.

The first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation are subject to partial exemption in the form of a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

### **Perceived Goals in Creating and Altering Oil Extraction Exemptions**

The limited duration exemption provided in Section 57-51.1-02.1 for liquids produced from a collection system employed to avoid flaring was enacted by House Bill No. 1134 (2013). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of gas that might otherwise be flared. The exemption provided in Section 57-51.1-03(1) for oil that is exempt from the gross production tax imposed by Chapter 57-51, and the exemption provided in Section 57-51.1-03(2) for production from stripper well property or an individual stripper well, were enacted

by Initiated Measure No. 6, which was approved by the voters at the general election held on November 4, 1980. The exemptions provided in Section 57-51.1-03(3) for incremental oil produced from secondary and tertiary recovery projects were enacted by House Bill No. 1414 (1991). The perceived goal of the Legislative Assembly in creating the exemption was to provide an exemption to encourage the enhanced recovery of oil that might not otherwise be produced. The enhanced oil recovery exemptions were amended several times following their enactment, including in 2009 to provide an exemption for incremental production from a tertiary recovery project that uses carbon dioxide, and in 2019 to provide an exemption for incremental production from a tertiary recovery project that uses carbon dioxide produced from coal.

The partial exemption in the form of a reduced 2 percent tax rate on the gross value at the well of the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations, as provided in Section 57-51.1-03(4), was enacted by Senate Bill No. 2397 (2007). The perceived goal of the Legislative Assembly in creating the exemption was to foster a competitive tax environment to encourage industry to continue to develop oil resources in the state. The exemption was amended in 2009 to cap the amount of oil exempted per well at 75,000 barrels of oil produced or the first \$4.5 million of gross value at the well, whichever is less.

### **Testimony and Committee Considerations**

The committee received data from a representative of the Tax Department regarding the exemption provided to production from stripper wells and the reduced tax rate applied to production from new non-Bakken wells and the resulting reduction in tax collections. The data indicated 101,800,535 barrels of oil from stripper wells were exempt from oil extraction tax from fiscal years 2015 to 2019, resulting in \$258,710,689 in reduced tax collections, and 3,309,174 barrels of oil from new non-Bakken wells were subject to a reduced oil extraction tax rate during the same period, resulting in \$5,821,264 in reduced tax collections. The committee did not receive testimony from interested parties in support of retaining, eliminating, or modifying oil and gas gross production or oil extraction tax exemptions. The committee did not identify any concerns relating to the exemptions or ways in which the exemptions could be improved. The committee indicated the exemptions are operating as intended.

### **Conclusions**

The committee makes no recommendation regarding oil and gas gross production or oil extraction tax exemptions.

## **Coal Severance and Conversion Tax Exemptions**

### **Imposition of Coal Severance Tax**

The coal severance tax is imposed on the act of removing coal from the earth pursuant to Chapter 57-61. The tax applied to coal severed for sale or industrial purposes, subject to certain exceptions. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The tax is applied at a rate of 37.5 cents per ton. An additional 2 cents per ton tax is levied for the lignite research fund.

### **Explanation of Coal Severance Tax Exemptions**

Coal used to heat buildings in the state, by the state or any political subdivision of the state, and in agricultural processing facilities in the state or adjacent states is exempt from coal severance tax. A 50 percent reduction of the 37.5 cent tax is allowed for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output. A county may grant a partial or complete exemption from the county's 70 percent portion of the 37.5 cent tax for coal that is shipped out of state.

### **Perceived Goals in Creating or Altering Coal Severance Tax Exemptions**

The exemption provided in Section 57-61-01.1, for coal used to heat buildings in the state and coal used by the state or any political subdivision of the state, was enacted by Senate Bill No. 2239 (1981). The perceived goal of the Legislative Assembly in creating the exemption was to encourage the use of coal by the state and political subdivisions and the use of coal for heating purposes to decrease the state's dependence on other energy sources.

The exemption provided in Section 57-61-01.4, for coal used in agricultural processing facilities in the state or adjacent states, was enacted by House Bill No. 1470 (1985). As originally enacted, the exemption included an exemption for coal used in sugar beet refining plants. The perceived goal of the Legislative Assembly in creating the exemption was to make lignite coal more competitive with coal from Montana and Wyoming for use in agricultural processing facilities and sugar beet refining plants. Proponents of the exemption noted the loss of coal contracts was having a negative impact on employment in coal-producing areas of the state. The exemption was expanded in 2009 to include coal purchased for improvement through beneficiation which is then used in an agricultural commodity processing facility or a facility owned by the state or a political subdivision.

The 50 percent coal severance tax reduction provided in Section 57-61-01.3, for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output, was enacted by Senate Bill

No. 2449 (1985). The perceived goal of the Legislative Assembly in providing the tax reduction was to grow the export market for North Dakota coal.

Section 57-61-01.7, which allows a county to grant a partial or complete exemption from the county's 70 percent portion of the severance tax for coal that is shipped out of state, was enacted by House Bill No. 1362 (1993). As originally enacted, the exemption allowed a county to grant a partial or complete exemption from the county's 35 percent portion of the severance tax for coal that is shipped out of state. The perceived goal of the Legislative Assembly in creating the exemption was to prevent the potential closure of a local mine by reducing the tax on coal the mine shipped out of state.

### **Imposition of Coal Conversion Tax**

The coal conversion tax is imposed in lieu of property taxes on the operator of each coal conversion facility pursuant to Chapter 57-60. The land on which the facility is located remains subject to property taxes. The privilege tax on coal conversion facilities is applied based on the type of coal conversion facility. Electrical generating plants are subject to two separate levies. One levy is a .65 mill times 60 percent of installed capacity times the number of hours in the taxable period, and the other levy is .25 mill per kilowatt-hour of electricity produced for sale. Installed capacity means the number of kilowatts a power unit can produce as displayed on the nameplate assigned to the turbine of the power unit. Coal gasification plants are subject to a monthly tax of 13.5 cents per thousand cubic feet of synthetic natural gas produced for sale, or 2 percent of gross receipts, whichever is greater. Plants converting coal to products other than gas are taxed at a rate of 2 percent of gross receipts. Coal beneficiation plants are taxed at a rate of 20 cents per ton of beneficiated coal produced for sale, or 1.25 percent of gross receipts, whichever is greater.

### **Explanation of Coal Conversion Tax Exemptions**

Various types of plants and production receive a full or partial exemption from coal conversion tax. Beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility is exempt from tax. A new or repowered coal-burning electrical generation plant is exempt from the general fund portion of both levies for 5 years. The county may grant an exemption for up to 5 years from the county's 15 percent share of the levy on installed capacity. All new coal conversion plants other than electrical generating plants are exempt from the general fund's 85 percent share of the tax for 5 years. The county may grant a partial or complete exemption from the county's 15 percent share for up to 5 years. A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions during a taxable period receives a 20 percent reduction in the general fund share of the tax, and an additional reduction of 1 percent for every additional 2 percentage points of carbon dioxide emissions captured, up to a 50 percent reduction for 80 percent or more capture. The reduction is available for 10 years from the date of the first capture or from the date the facility is eligible to receive the credit. A conversion facility that met the carbon dioxide capture requirements before January 1, 2017, is not eligible for the reduction.

### **Perceived Goals in Creating or Altering Coal Conversion Tax Exemptions**

The exemption provided in Section 57-60-02 for beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility was enacted by House Bill No. 1613 (1989). As originally enacted, the exemption only applied to beneficiated coal produced in excess of 80 percent of the plant's design capacity. The perceived goal of the Legislative Assembly in providing the exemption was to incentivize developers to consider beneficiation projects to help maintain existing coal jobs and create future jobs. The exemption was viewed as providing environmental as well as economic benefits. The exemption was expanded in 2015 to include beneficiated coal produced for use within a coal conversion facility.

The 5-year exemption provided in Section 57-60-02 for the general fund's 85 percent share of tax for new coal conversion plants other than electrical generating plants was enacted by House Bill No. 1574 (1985). As originally enacted, the exemption exempted 65 percent of the tax imposed on the plant for 5 years with the county retaining the ability to grant a full or partial exemption on the remainder of the tax for the same time period. The perceived goal of the Legislative Assembly in providing the exemption was to encourage the construction of new coal conversion plants. The exemption was amended in 2001 to reflect changes to the county's portion of the tax, reduced from 35 to 15 percent, for purposes of identifying the amount of tax the county could exempt.

The 5-year exemption provided in Section 57-60-02 for a new or repowered coal-burning electrical generation plant was enacted by House Bill No. 1606 (1991). As originally enacted, the exemption exempted 65 percent of the tax imposed on new electrical generating plants for 5 years with the county retaining the ability to grant a full or partial exemption on the remainder of tax for the same time period. The perceived goal of the Legislative Assembly in providing the exemption was to promote economic development by providing the same tax incentive to electrical generation plants as was provided to coal conversion facilities. It was noted each 400-megawatt plant creates 1,000 direct and indirect jobs and \$72 million in business activity. The exemption was amended three times following its enactment. The exemption was amended in 2001 to reflect changes to the county's portion of the tax, reduced from 35 to 15 percent, for purposes of identifying the amount of tax the county could exempt.

The reduction provided in Section 57-60-02.1 for a coal conversion facility that captures carbon dioxide emissions was enacted by Senate Bill No. 2221 (2009). The perceived goal of the Legislative Assembly in providing the tax reduction was to encourage the capture and reduction of carbon dioxide emissions. The tax reduction was amended in 2017 to disqualify coal conversion facilities that met carbon dioxide capture requirements before January 1, 2017, from qualifying for the tax reduction.

### **Testimony and Committee Considerations**

The committee received data from a representative of the Tax Department regarding the number of tons of coal used to heat buildings or used by a political subdivision or an agricultural processing facility which was exempt from coal severance tax. The data indicated 246,926 tons of coal was exempt from coal severance tax in fiscal year 2019, resulting in \$97,536 of reduced tax collections. The committee received estimates from the Tax Department regarding the impact of the 5-year coal conversion tax exemption applied to new electrical generating plants or plants that have completed repowering because there are no new or repowered plants in the state. The estimate indicated an annual reduction of \$293,004 in coal conversion tax revenue collections might result from the addition of a new or repowered small electrical generating plant, and an annual reduction of \$1,445,000 in coal conversion tax revenue collections might result from the addition of a new or repowered large electrical generating plant as a result of the exemption. The committee did not receive testimony from interested parties in support of retaining, eliminating, or modifying coal conversion or coal severance exemptions. The committee did not identify any concerns relating to the exemptions or ways in which the exemptions could be improved. The committee indicated the exemptions are operating as intended.

### **Conclusions**

The committee makes no recommendation regarding coal severance or coal conversion tax exemptions.

## **REPORTS RECEIVED BY THE COMMITTEE**

### **Oil and Gas Gross Production Tax Allocation Report**

The committee was assigned the responsibility to receive an annual compilation and summary from the Tax Department of reports submitted by counties and school districts that received allocations of oil and gas gross production tax revenues.

The report pertaining to allocations received by counties is required to be provided to the Legislative Council within 45 days after the end of each calendar year pursuant to Section 57-51-15(6). The Tax Department sent revenue and expenditure reporting forms to each county that received oil and gas gross production tax distributions. Each county receiving a gross production tax allocation is required to report the county's statement of revenue and expenditures, the county's ending fund balance, the amount of gross production tax revenue deposited in the county general fund, the amount expended from gross production tax allocations, the purposes for which gross production tax revenue was expended, and the amount and purpose of any gross production tax revenue allocations to townships within the county. The reports indicated a total of \$201,125,712 was received by the 16 counties receiving oil and gas gross production tax distributions in calendar year 2018, and \$185,291,593 was received in calendar year 2019. The reports indicated each responding county placed the revenue allocations in its general fund. Most counties expended funds for law enforcement needs and several counties expended funds for road and county administrative costs.

The report pertaining to allocations received by school districts is required to be provided to the Legislative Council within 30 days after the end of each fiscal year pursuant to Section 57-51-15(7). The Tax Department sent revenue and expenditure reporting forms to each school district that received oil and gas gross production tax distributions. Each school district receiving a gross production tax allocation is required to report the school district's statement of revenue and expenditures and the school district's ending fund balance, which may be provided by reference to the data stored with the Department of Public Instruction, the amount of gross production tax revenue allocated to the school district, the amount expended from gross production tax allocations, and the purposes for which gross production tax revenue was expended. The report indicated a total of \$32,438,032 was received by the 60 school districts receiving oil and gas gross production tax distributions in fiscal year 2019 and \$31,761,001 was received in fiscal year 2020. Twenty-three school districts did not provide a report for the 2020 fiscal year. Most reporting school districts expended funds to meet general operating expenses.

The committee was informed there is no statutory penalty for schools failing to provide the report. Some schools have difficulty submitting the report before the end of the interim because it falls so close to the end of the fiscal year. Schools also have been preoccupied with matters relating to the Coronavirus (COVID-19), which might have delayed reporting from some schools. The report indicated much of the information reported by schools also is reported to the Department of Public Instruction, and questions were raised whether this was a duplicative reporting requirement. Committee members acknowledged the state imposes several reporting requirements at the local level. Some committee members expressed interest in eliminating the report, while others viewed the report as a valuable tool to help track changes in funding allocations when the oil tax distribution formula is modified by the Legislative Assembly.

## **Property Tax Increase Report**

The committee was assigned the responsibility to receive an annual report from the Tax Department on annual property tax increases pursuant to Section 57-20-04. The report is due by April 1 of each year and must include the annual increase in property taxes levied by each taxing district of the state after adjusting for property that was not taxable in the preceding year and property that is no longer taxable which was taxable in the preceding year. The committee received detailed information regarding the year-to-year change in dollars levied by counties, cities, and school districts in the state. The aggregate increase in property tax levied by class of property from 2017 to 2018 was 3.9 percent for agricultural land, 5.3 percent for residential property, 3.4 percent for locally assessed commercial property, and 5 percent for centrally assessed commercial property. The aggregate increase in property tax levied by class of property from 2018 to 2019 was 4.1 percent for agricultural land, 4.6 percent for residential property, 5.1 percent for locally assessed commercial property, and 8.8 percent for centrally assessed commercial property. The total amount levied in dollars on all classes of property increased by \$45,689,326 from 2017 to 2018 and \$53,576,089 from 2018 to 2019.

The committee received a demonstration of an online tool created by the Tax Department which enables users to view mill levies imposed by political subdivisions and property tax changes for existing property for each political subdivision of the state. Committee members commended the transparency provided through the creation of the online tool. Committee members also acknowledged the value of receiving the yearly property tax increase report in making the public aware of where property tax increases are occurring and providing a forum for taxing districts to explain the reasons behind any increases.

## **Renaissance Zone and Tax Increment Financing Report**

The committee was assigned the responsibility to receive an annual report from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to Section 40-63-03(2), and a report compiling reports from cities that have renaissance zone property included in a tax increment financing district, pursuant to Section 40-63-03(10). According to the report on renaissance zone progress, 1,827 projects have been approved and 1,434 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2018 indicated renaissance zones created 17 new businesses, 10 business expansions, and 168 new jobs. The benefits realized by the 54 projects that reached completion in 2018 amounted to \$1,319,639 in income tax exemptions and \$1,862,706 in property tax exemptions. A survey of renaissance zone communities conducted in 2019 indicated renaissance zones created 12 new businesses, 16 business expansions, and 110 new jobs. The benefits realized by the 50 projects that reached completion in 2019 amounted to \$874,075 in income tax exemptions and \$2,845,343 in property tax exemptions.

Information contained in the second report indicated the cities of Hazen, Mandan, and Bismarck have properties located in both a renaissance zone and a tax increment financing district. According to the report, only one property in Mandan is receiving benefits under both the renaissance zone program and tax increment financing program. Testimony indicated the renaissance zone program is functioning as intended and the program continues to be a vital economic tool for smaller communities.

## **State Grantor Report**

The committee was assigned the responsibility to receive from the Department of Commerce an annual compilation and summary of the reports of state agencies that awarded business incentives for the previous calendar year pursuant to Section 54-60.1-07. The business incentive accountability law became effective January 1, 2006. The law applies to businesses that receive incentives totaling \$25,000 or more in a given year from state or local grantors. The law requires the recipient business enter a business incentive agreement with the grantor, which must provide a description of the incentive to be granted as well as the job goals the business seeks to achieve within the first 2 years. A recipient business must report progress toward achieving stated goals. The reports indicated 872 business incentive agreements were entered from 2015 to 2019 totaling an incentive value of \$129,412,768. The report details the distribution of business incentives by type, public purpose, and type of business. The report also provides the number of agreements entered by year and identifies whether the goal was to create jobs, retain jobs, or neither. The report stated 3,730 jobs were created and retained over the last 5 years compared to a goal of 2,034 jobs. Eleven percent of closed agreements entered from 2014 to 2018 did not meet job creation goals with no repayment of funds.

# TRIBAL TAXATION ISSUES COMMITTEE

Section 4 of Senate Bill No. 2312 (2019) extended the Tribal Taxation Issues Committee for a second interim. The committee is composed of 10 members--the Governor, who was designated by the Legislative Management to serve as Chairman of the committee; the Lieutenant Governor; the Tax Commissioner; the Executive Director of the Indian Affairs Commission; the Majority and Minority Leaders of the House of Representatives and the Senate; and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate. The committee's nonlegislative members are nonvoting members. The legislation required the committee chairman to invite tribal chairmen to each committee meeting.

The Tribal Taxation Issues Committee was directed to study tribal taxation issues, including tax collection agreements that exist between the state and tribes, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, the procedure for withdrawal from an agreement and how to handle disputed funds, and methods for sourcing revenue generated from wells located inside or outside of the external boundaries of a reservation in this state when a horizontal lateral enters a spacing unit that is located both inside and outside of the external boundaries of a reservation in this state. The committee also was authorized to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.

Section 3 of Senate Bill No. 2312 extended the suspension of North Dakota Century Code Section 54-35-23 through July 31, 2021. Section 54-35-23 provides for the Tribal and State Relations Committee. This committee, which was created in 2005, conducts joint meetings with the North Dakota Tribal Governments' Task Force. The North Dakota Tribal Governments' Task Force is composed of six members--the Executive Director of the Indian Affairs Commission, or the director's designee; the Chairman of the Standing Rock Sioux Tribe, or the Chairman's designee; the Chairman of the Spirit Lake Tribe, or the Chairman's designee; the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the Chairman's designee; the Chairman of the Turtle Mountain Band of Chippewa Indians, or the Chairman's designee; and the Chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the Chairman's designee. The Tribal and State Relations Committee is required to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.

The Legislative Management delegated to the Tribal Taxation Issues Committee the responsibility to receive a report from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court, pursuant to Senate Bill No. 2153 (2019).

The committee members were Governor Doug Burgum (Chairman); Representatives Josh Boschee, Craig Headland, and Chet Pollert; Senators Dwight Cook, Joan Heckaman, and Rich Wardner; and Citizen Members Scott J. Davis, Indian Affairs Commission; Ryan Rauschenberger, Tax Department; and Brent Sanford, Lieutenant Governor.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## FEDERAL INDIAN LAW AND POLICY

Indian law is a complex area of law. Due to the sovereign character of Indian tribes, most Indian law is federal in nature. There have been several distinct eras of federal-tribal relations.

From 1789 to approximately 1820, the federal government sought to minimize friction between non-Indians and Indians by limiting contact between the groups. This era was followed by the Indian removal era--approximately 1820 to 1850--when the federal government removed Indians from east of the Mississippi River to the Oklahoma Territory. This era was followed by the reservation era--1850 to 1887--when, as non-Indians continued to move west and friction developed between non-Indians and Indians, the federal government developed a policy of restricting Indian tribes to specified reservations. This policy was implemented by treaty in which each tribe ceded much of the land it occupied to the United States and reserved a small portion. This is the origin of the term reservation.

When the federal General Allotment Act of 1887, or Dawes Act, was enacted, United States-Indian relations entered a new era known as the allotment era because the Act authorized the President to allot portions of reservation land to individual Indians. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to

be conveyed to the Indian allotted free of all encumbrances. The Act resulted in a decline in the total amount of Indian-held land from 138 million acres in 1887 to 48 million acres in 1934.

The allotment era was followed by the Indian reorganization era--1934 to 1953--during which the tribe's land base was protected by extending the trust period indefinitely for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. This era was followed by the termination and relocation era--1953 to 1968--when the federal government sought to terminate tribes believed to be prosperous enough to become part of the American mainstream, terminate the federal government's trust responsibility, and encourage the physical relocation of Indians from reservations to urban areas.

The termination and relocation policy was regarded as a failure, and the modern tribal self-determination era began with the federal Indian Civil Rights Act of 1968. The effect of the Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Act also amended Public Law 280 so states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. Several federal acts have been enacted since 1968 to enhance tribal self-determination.

### STATE-TRIBAL RELATIONS

One of the most important concepts in state-tribal relations is the concept of sovereignty. In the federal system, both the states and Indian tribes are sovereigns. Tribal sovereignty refers to the right of Indians to govern themselves. Sovereignty for tribes includes the right to establish their own form of government, determine membership requirements, enact legislation, and establish law enforcement and court systems.

Based on early United States Supreme Court cases, tribes are sovereign and free from state intrusion on their sovereignty. State laws generally have been held inapplicable within the boundaries of reservations, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

### STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter 54-40.2 provides for agreements between public agencies and tribal governments. A public agency means any political subdivision, including a municipality, county, school district, and any agency or department of North Dakota. Tribal government means the officially recognized government of an Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. Under this chapter, any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

### STATE-TRIBAL TAX REVENUE SHARING AGREEMENTS

The committee received information from the Tax Department regarding the existing revenue sharing agreements between the state and tribal nations within the state and the revenue allocated to tribes in accordance with each agreement.

Tribe	Effective Date	Tax Type	Current Revenue Allocation		Admin. Fee	Tribal Share of Fiscal Year 2019 Revenue
			Tribe	State		
Standing Rock Sioux Tribe	July 1, 1993	Cigarette and other tobacco products	87%	13%	1%	\$76,485
Standing Rock Sioux Tribe	January 1, 1999	Motor fuel and special fuel	87%	13%	1%	\$387,653
Spirit Lake Tribe	September 1, 2006	Motor fuel and special fuel	76%	24%	1%	\$234,967
Three Affiliated Tribes of the Fort Berthold Reservation	September 1, 2007	Motor fuel and special fuel	70%	30%	1%	\$1,766,981
Three Affiliated Tribes of the Fort Berthold Reservation	July 1, 2008	Oil and gas			None	\$256,043,013
		Produced from trust lands	80%	20%		
		All other production	20%	80%		
Turtle Mountain Band of Chippewa Indians	September 1, 2010	Motor fuel and special fuel	96%	4%	1%	\$700,560

#### Cigarette and Tobacco Excise Tax Agreement

On July 1, 1993, a collection agreement between the Tax Commissioner and the Standing Rock Sioux Tribe became effective. Under the agreement, the tribe levies a cigarette and tobacco excise tax on all licensed wholesalers and

distributors operating on the Standing Rock Sioux Reservation. The tax rates are identical to the state tax rates. The Tax Department serves as an agent of the tribe in collecting the tax. The agreement's renegotiated terms, which became effective on May 1, 2015, provide 87 percent of the tax, less a 1 percent administrative fee, is returned to the tribe. Thirteen percent, plus the 1 percent administrative fee, is deposited in the general fund.

### **Motor Vehicle Fuel and Special Fuel Tax Agreements**

The state has entered motor vehicle fuel and special fuel tax agreements with all tribes in the state except the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. The tax applies to sales of motor vehicle fuel and special fuel within the exterior boundaries of the reservation at a rate of 23 cents per gallon. The state's agreement with:

- The Standing Rock Sioux Tribe became effective January 1, 1999. The agreement's renegotiated terms, which became effective on May 1, 2015, provide for a revenue allocation of 87 percent, less a 1 percent administration fee, to the tribe. Thirteen percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Spirit Lake Tribe, which became effective September 1, 2006, provides for a revenue allocation of 76 percent, less a 1 percent administration fee, to the tribe. Twenty-four percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Three Affiliated Tribes of the Fort Berthold Reservation, which became effective September 1, 2007, provides for a revenue allocation of 70 percent, less a 1 percent administration fee, to the tribe. Thirty percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Turtle Mountain Band of Chippewa Indians, which became effective September 1, 2010, provides for a revenue allocation of 96 percent, less a 1 percent administration fee, to the tribe. Four percent, plus the 1 percent administration fee, is deposited in the general fund.

### **Oil and Gas Tax Agreement**

The oil and gas revenue sharing agreement between the Three Affiliated Tribes and the state was signed June 10, 2008, by Three Affiliated Tribes Chairman Marcus D. Wells, Jr., and Governor John Hoeven and was to remain in effect for 24 calendar months after July 1, 2008. The agreement was entered pursuant to the authority provided in Chapter 57-51.2, which was enacted following the passage of House Bill No. 2419 (2007). A renegotiated agreement was signed on January 13, 2010, by Three Affiliated Tribes Chairman Marcus D. Levings and Governor Hoeven. The provisions of the 2010 agreement were to remain in effect indefinitely, unless formally cancelled by either party.

In 2013, Chapter 57-51.2 was extensively revised to provide more beneficial terms for the Three Affiliated Tribes under an oil and gas tax agreement. A new agreement implementing the 2013 legislative changes was signed on June 21, 2013, by Three Affiliated Tribes Chairman Tex Hall and Governor Jack Dalrymple. In 2015, Chapter 57-51.2 was amended to expand the scope of the chapter to apply to agreements entered by the Standing Rock Sioux Tribe and the Turtle Mountain Band of Chippewa Indians and to add confirmation requirements for future agreements. Specifically, any agreement entered after July 31, 2015, was subject to confirmation by a majority of members elected to the House of Representatives and the Senate.

In 2019, the confirmation requirements were removed by Senate Bill No. 2312 and the revenue sharing split was changed from a 50/50 revenue split to an 80/20 split in favor of the tribe for oil tax revenue from trust lands and an 80/20 split in favor of the state for revenue from all other production. An agreement reflecting the new revenue split was signed on February 28, 2019, by Three Affiliated Tribes Chairman Mark Fox and Governor Doug Burgum and became effective on March 29, 2019.

The committee received testimony from representatives of the Three Affiliated Tribes regarding issues with the oil and gas tax agreement, including concerns pertaining to the ongoing legal battle of the ownership of riverbed mineral rights. Tribal representatives noted the tribe will seek a revenue sharing agreement regarding riverbed production if the royalty disagreements cannot be resolved. Testimony indicated the tribe favors placing tax revenue derived from riverbed minerals in a neutral, interest-bearing federal account to ensure an accurate accounting of the funds, the accrual of interest, and protection from fund depletion due to operator bankruptcies. A tribal representative suggested depositing 20 percent of the oil and gas tax revenue derived from riverbed minerals with the state, and 20 percent with the tribe, and depositing the remaining 60 percent in an escrow account until the ownership issue is resolved.

Tribal representatives expressed concerns regarding oil and gas activity and horizontal drilling near the boundaries of the Fort Berthold Reservation. Testimony indicated if a well is padded and drilled within the exterior boundaries of the reservation, and a horizontal lateral from the well extends to lands situated outside the exterior boundaries of the reservation, the tribe receives 80 percent of the tax revenue attributable to production from trust lands within the spacing unit and 20 percent of the tax revenue attributable to nontrust land within the spacing unit. If a well is padded and drilled outside the exterior boundaries of the reservation, and a horizontal lateral from the well extends to land situated within



the exterior boundaries of the reservation, the tribe does not receive any tax revenue attributable to the production derived from the spacing unit. Tribal representatives indicated the tribe is losing tax revenue on the portion of cross-border wells that are not subject to the tax agreement, and the revenue is needed to fund infrastructure and invest in social programs. Testimony indicated past tax revenue collected from the cross-border wells not subject to the tax agreement could be calculated using historical data, and the revenue the tribe did not receive because those wells were not subject to the tax agreement should be considered when trying to resolve the issue.

The committee received testimony from a representative of the Department of Mineral Resources indicating the department does not dictate the surface location of a well within a spacing unit. Testimony indicated operators choose the locations and base the decision on a number of factors including the ease of permitting. According to the testimony, the state permitting fee is \$100 and the Bureau of Land Management permitting fee is \$1,250 making it less expensive for operators to drill outside the exterior boundaries of the reservation.

The committee received testimony from a representative of MineralTracker, which conducted a forecast and analysis of projected production for 214 wells with wellbores that traverse the exterior boundaries of the Fort Berthold Reservation. The study analyzed each well individually, accumulated each well's historical production, used a reservoir engineering technique to project how much oil and gas likely remains in each well, and conducted a forecast and analysis to calculate the wells' projected production based on historical and economic data. According to the testimony, 132 of the wells have wellheads located outside the reservation boundary, and 82 wells have wellheads located inside the reservation boundary. The study estimated the wells would produce approximately 50 million barrels of oil in the future. The study calculated the prorated amount of oil associated with footage inside and outside the boundary and determined the footage outside the boundary would produce 10.8 million barrels of oil more than the footage inside the boundary. The study estimated an additional 73 to 93 cross-border wells might be drilled in the future. In determining the number of additional cross-border wells that might be drilled in the future, the study only considered spacing units that already had some level of development in place.

The committee acknowledged the intent of the oil and gas tax legislation was to create a more stable regulatory environment to incentivize companies to drill and operate in the state. Committee members agreed both the state and the tribe benefit when oil and gas resources are developed under a stable taxing environment.

### **Sales and Use Tax Collection Agreement**

House Bill No. 1406 (2015) authorized the governor to enter an agreement with the Standing Rock Sioux Tribe for the state administration and collection of state- and local-level tribal sales, use, and gross receipts taxes imposed within the exterior boundaries of the North Dakota portion of the Standing Rock Sioux Reservation. The bill outlined the parameters for an agreement, including provisions relating to the rate of tax imposed, conforming tribal taxes to the state sales tax base, allocating revenues, authorizing the Tax Commissioner to administer and collect the tax and providing for these services, authorizing the Tax Commissioner to offset future distributions to the tribe in the case of an overpayment, and determining the proper venue for resolving any disputes arising from an agreement.

The agreement, which became effective July 1, 2016, provided for an 80/20 tribal/state split of tax collections. The agreement required the Standing Rock Sioux Tribe to impose a 5 percent general sales and use tax, a 3 percent sales and use tax on new manufactured homes, a 7 percent alcohol gross receipts tax, and a 3 percent farm machinery gross receipts tax on new farm machinery and new farm irrigation equipment. The taxes were identical to North Dakota's sales, use, and gross receipts taxes. The Standing Rock Sioux Tribe also imposed a .25 percent tribal local tax that applied to all transactions subject to the state-level taxes. All exceptions that applied to the state's taxes also applied to the tribal taxes.

On January 27, 2017, Tax Commissioner Ryan Rauschenberger issued a memorandum to North Dakota sales and use tax permitholders which provided "[e]ffective March 7, 2017, the North Dakota Office of State Tax Commissioner will discontinue its administration of the Standing Rock Sioux Tribe's sales, use and farm machinery and alcohol gross receipts taxes including the tribal .25 percent local tax." The memorandum further provided the Standing Rock Sioux Tribe's taxes would be administered by the Standing Rock Sioux Tribe Tax Department rather than by the state Tax Department. Chapter 57-39.8, which authorized the agreement, was repealed by Senate Bill Nos. 2257 and 2258 (2019). The authority to enter sales tax agreements is now provided under Chapter 57-39.9.

### **FRAMEWORK FOR FUTURE TAX REVENUE SHARING AGREEMENTS**

Committee members and tribal representatives agreed the primary goal of tax revenue sharing agreements is to avoid dual taxation and promote economic development. The committee received testimony from representatives of the Tax Department regarding other states' tax revenue sharing agreements with tribal nations. The testimony included information on revenue sharing agreements in Minnesota, Montana, and South Dakota.

According to the testimony, the most common methods other states use for tax revenue sharing agreements include a fixed percentage revenue split, a per capita split, and a per capita plus a fixed percentage split. Revenue sharing agreements in Montana use a per capita method based on consumption for all tax types, including cigarette, alcohol, and motor fuels. The only exception is Montana's oil and gas tax revenue sharing agreement, which uses a fixed percentage split allocating 50 percent of the revenue to the state and 50 percent to the tribe. South Dakota uses a fixed percentage method for all tax types allocating 69 percent of the revenue to the tribe and 31 percent to the state. Minnesota uses a per capita plus a fixed percentage method for all tax types with the per capita formula creating the base and the base being shared equally between the state and the tribe. North Dakota uses a per capita plus a fixed percentage method for all tax types except the oil and gas tax, which uses a fixed percentage method. South Dakota's fixed percentage method specifically tracks sales made on each tribal reservation whereas Minnesota's formula, which is similar to North Dakota's, consists of a per capita formula based on the entire state and then a fixed percentage split based on each tribe's population.

Testimony indicated although Senate Bill Nos. 2257 and 2258 (2019) provide a framework for collecting and administering an alcoholic beverage wholesale tax, a tobacco products wholesale tax, an alcoholic beverages and gross receipts tax, and a sales, use, and gross receipts tax, no tribal agreements have been signed.

### **Tobacco Products Wholesale and Alcoholic Beverage Wholesale and Gross Receipts Tax Revenue Sharing Agreements**

A representative of the Tax Department presented testimony regarding a framework for state-tribal agreements for the administration and collection of alcoholic beverage wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax. The testimony included a review of the requirements of a state-tribal agreement under Senate Bill No. 2257 (2019), the tax revenue formula, and a snapshot of what tribes could potentially receive based on the formula. According to the testimony, if all five tribes entered a revenue sharing agreement for the administration and collection of an alcoholic beverage wholesale tax, tobacco products wholesale tax, and an alcoholic beverages gross receipts tax, distributions based on the formula could range from \$19,823 to the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation to \$898,198 to the Turtle Mountain Band of Chippewa Indians. Testimony indicated the estimated tax revenues could be higher if higher tribal population numbers are reflected in the 2020 federal census.

The committee received testimony from representatives of the Three Affiliated Tribes identifying the key reasons why the tribe has not entered a state-tribal alcohol tax agreement. According to the testimony, the tribe's primary concern with the framework for a state-tribal alcohol tax agreement is the manner in which the tax revenue is split between the tribe and the state. Tribal representatives asserted the revenue split should be more favorable to the tribe because the formula fails to account for the negative impact of alcohol use on the reservation. Representatives of the tribe also expressed concern regarding the legislation's requirement for state collection of the alcohol tax and view the requirement as an erosion of the tribe's sovereign right to regulate alcohol sales within reservation boundaries. The tribal representatives noted there is an opportunity for dual regulatory authority, such as allowing the tribe to revoke a retailer's license if the retailer violates licensing requirements. The committee received testimony from representatives of the Tax Department indicating additional legislation would be required to allow the state to enter an alcohol tax agreement allowing for dual regulation or requiring the state to cede its regulatory authority.

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians and Spirit Lake Tribe indicating their respective tribes might be interested in entering a state-tribal alcohol and tobacco tax agreement. Testimony indicated tribal councils may be interested in meeting with the Tax Department to discuss how the state could assist in collecting alcohol and tobacco taxes for the tribes. According to the testimony, the Turtle Mountain Band of Chippewa Indians has collected approximately \$120,000 per year from tax revenue generated from a cigarette tax of 5 cents per pack, and the tribe recently increased the tax from 5 cents to 10 cents. Representatives from the Spirit Lake Tribe indicated the tax revenue allocation formula might need to be re-evaluated as the current formula only considers the number of enrolled members living on the reservation and fails to account for over 1,000 members who live off the reservation in surrounding communities and use the tribe's services. Testimony indicated the current formula also neglects to account for nonenrolled members who use the tribe's local establishments.

### **Online Sales Tax**

The Tax Department provided information regarding the taxation of online sales. It was reported the United States Supreme Court in *South Dakota v. Wayfair* (2018) held states can require businesses, that do not have a physical presence in the state and that meet certain requirements, to collect and remit sales taxes on transactions in the state. According to the testimony, as of December 3, 2019, over \$27 million in sales tax was collected from remote sellers and over 5,700 remote sellers are registered to collect sales tax. Testimony indicated Senate Bill No. 2258 (2019) provides the framework for state-tribal sales tax agreements, and because the allocation of the sales tax revenue is based on a formula, which was derived from formulas used in other states, the legislation eliminates the need to track individual

sales on the reservation. According to the testimony, if a tribe had entered a state-tribal sales tax agreement, the tribe would have received a portion of the \$27 million collected by the state from online sales taxes.

The committee received testimony from a representative of the Three Affiliated Tribes indicating tribes have a right to the proceeds from online sale tax collected from enrolled members on the reservation, and tribes are missing out on tax revenues.

### **Conclusions**

Committee members encouraged tribal representatives to bring proposals or concerns regarding state-tribal tax agreements to the Indian Affairs Commission and the Governor's office in anticipation of the 2021 legislative session. The committee members expressed hope more state-tribal tax agreements would be entered.

### **GAMING CONCERNS**

The committee received testimony from tribal representatives regarding the impact on tribal gaming due to the implementation of new gaming devices in the state and gaming regulations. According to the testimony, state-tribal gaming compacts initially were entered to help promote tribal economic development, but tribal economies have been negatively impacted by the implementation of electronic pull tab devices across the state. Tribal representatives expressed concerns regarding the high level of regulations with which tribal casinos must comply compared to the state's limited regulatory oversight of electronic pull tab devices used for charitable gaming.

The committee received testimony from a representative of the Attorney General's office indicating electronic pull tab device activity doubled the gross proceeds for the 2019 fiscal year to over \$585 million and generated over \$8.1 million for the general fund. According to the testimony, there were over 2,700 electronic pull tab devices in 618 sites across the state as of June 30, 2020. Testimony indicated the federal government has imposed certain reporting requirements for tribal casinos whereas the federal reporting requirements do not apply to the state's charitable gaming. The committee received a comparison of the regulations that apply to electronic pull-tab devices operated by charitable organizations under the state's charitable gaming laws and the regulations that apply to Class III gaming devices operated by tribal casinos under state-tribal gaming compacts and federal law.

The committee received testimony from a representative of the Spirit Lake Tribe indicating tribal casino revenue decreased by over 40 percent after electronic pull tab devices were implemented in August 2018. According to the testimony, the lack of adequate staffing by the state has resulted in little regulatory oversight over the large amount of gaming devices operating across the state, and the unregulated use of these devices can result in money laundering and tax evasion issues. Testimony also indicated tribal casinos have heavily regulated procedures in place which help identify and deter such activities.

Committee members acknowledged the interim Taxation Committee is studying charitable gaming taxation issues, including whether the Attorney General has adequate funding to regulate the state's charitable gaming, and the interim Judiciary Committee is studying charitable gaming regulations.

### **TRIBAL HEALTH CARE FUNDING**

The committee received testimony from tribal representatives regarding health care funding needs. The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicating the federal Indian Health Service (IHS) is the tribe's primary health care provider but is chronically underfunded and understaffed. According to the testimony, House Bill No. 1194 (2019) addressed coordination care agreements, but prohibited tribes from using funds received under an agreement for capital construction projects or for services covered by IHS. Testimony indicated restricting the use of the funds in that manner is burdensome for the tribes. According to the testimony, IHS has a lower standard pay scale for medical professionals, and the ability to use those funds more freely would assist in attracting medical professionals to the area.

### **INFRASTRUCTURE NEEDS**

The committee received information regarding various tribes' infrastructure needs and challenges. Tribal representatives indicated road conditions and maintenance are a concern for tribes. According to the testimony, a road maintenance issue on State Highway 57 involving an exposed culvert has caused safety concerns for the Spirit Lake Tribe. Testimony indicated the cost of road maintenance is a concern for the Turtle Mountain Band of Chippewa Indians because the tribe services many county roads located on the reservation. A representative of the Standing Rock Sioux Tribe indicated a technical assistance team should be formed to address road conditions in rural areas. A representative from the Department of Transportation encouraged a meeting with each tribe's transportation director to discuss the issues facing the tribes.

Committee members discussed the benefits that may result from tribal cities choosing to become incorporated under North Dakota law. Benefits discussed included funding for certain infrastructure projects due to legislation passed during the 2019 legislation session and a share in the state aid distribution fund and the highway tax distribution fund. Committee members expressed understanding that incorporating is a sensitive subject for tribes and education on the process and effect of incorporating would be beneficial in furthering additional discussions on incorporation.

## **LAW ENFORCEMENT ISSUES**

The committee received information regarding law enforcement issues facing the tribes. Tribal representatives indicated drug use is prevalent on the reservations, and there is a shortage of law enforcement officers and inadequate funding. Testimony indicated a desire for the formation of a joint drug task force, and additional resources to combat the rampant drug activity. Testimony from a representative of the Turtle Mountain Band of Chippewa Indians indicated only four tribal officers and nine Bureau of Indian Affairs officers patrol the 18,000 member, 6- by 12-mile reservation. Testimony from a representative of the Spirit Lake Tribe indicated the tribe would like assistance from the state in expediting background checks to improve the officer hiring process.

## **OTHER ISSUES AFFECTING TRIBES**

### **Impact of Coronavirus**

The committee received testimony from tribal representatives regarding the impact of the Coronavirus (COVID-19) pandemic on tribes. Representatives of several tribes indicated tribal revenue has been negatively impacted by the pandemic, in part due to the temporary closure of tribal casinos due to COVID-19 concerns. Testimony indicated tribal casinos that have reopened have implemented numerous health and safety precautions relating to COVID-19. The committee was informed underlying medical conditions are prevalent in many tribal communities, and the State Department of Health has been working closely with the Indian Affairs Commission and tribal councils to provide resources and testing supplies.

### **Federal Census**

The committee received testimony from tribal representatives regarding the concern for an accurate federal census count of tribal members. The committee received testimony from a representative of the United States Census Bureau regarding the tribes' self-response rate. The census self-response is the number of individuals who respond to the census before enumerators follow up with individuals who have not responded. According to the testimony, if the self-response rate in an area is 30 percent or lower, the area is classified as an area of concern, and most reservations were below that mark. Testimony indicated the census deadline was extended to September 30, 2020, due to the COVID-19 pandemic, but the pandemic caused every census process to be delayed which has compressed the time available to reach places with low response rates.

### **Oil Spill Concerns**

The committee received testimony from representatives of the Standing Rock Sioux Tribe regarding concerns of the potential of an oil spill affecting the Cannonball area. According to the testimony, the tribe's main concern is an oil spill affecting the community's water source. The tribe indicated it would like the state's assistance in creating an emergency hazard mitigation plan. The committee received testimony from a representative of the Department of Emergency Services indicating the department could facilitate or partner with the tribe to conduct a hazardous chemical or crude oil spill exercise. The committee was informed the tribes can apply for grant funding opportunities involving emergency situations.

## **REPORT ON MEMORANDUM OF UNDERSTANDING**

The committee received a report from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court as required by Senate Bill No. 2153 (2019). The bill allowed the Department of Corrections and Rehabilitation, the Supreme Court, and the Indian Affairs Commission to enter a memorandum of understanding with tribal governments to provide for the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws.

The report noted a memorandum of understanding was developed and signed between the Spirit Lake Tribal Court and relevant state entities on January 15, 2020. The memorandum of understanding facilitates the sharing of information, data collection, and resources between the participating entities, and six juvenile cases have been involved in the pilot project. No other tribes have entered memorandums of understanding.

# **WATER TOPICS OVERVIEW COMMITTEE**

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management during each interim to appoint a Water Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees, and to designate a chairman. The committee must meet quarterly and is to operate according to the statutes and procedures governing the operation of other Legislative Management interim committees. This section originally created the Garrison Diversion Overview Committee in 1981 but was amended in 2009 to create the Water-Related Topics Overview Committee. The name was changed to its current form in 2013.

Section 54-35-02.7 provides the committee is responsible for:

1. Legislative overview of water topics and related matters;
2. The Garrison Diversion Project; and
3. Any necessary discussions with adjacent states on water topics.

In addition, the committee may meet with the State Water Commission (SWC) and must:

1. Work collaboratively with the SWC;
2. Report on the committee's project prioritization process;
3. Provide updates on allocated program expenditures; and
4. Report on the fund balances of projects, grants, and contracts.

In addition to its statutory obligations, the committee was tasked with receiving reports concerning water projects during the 2019-20 interim. Sections 12 and 14 of Senate Bill No. 2020 (2019) required the committee to receive reports "on a regular basis" and "quarterly," respectively, from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project (RRVWSP). Section 15 of Senate Bill No. 2020 required the SWC to report the results of a pilot project regarding implementation of a basinwide water plan to the committee by August 1, 2020.

The committee also was assigned one study. Senate Concurrent Resolution No. 4009 (2019) required the committee to study the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs.

Committee members were Representatives Jim Schmidt (Chairman), Tracy Boe, Chuck Damschen, Ron Guggisberg, Michael Howe, Bob Martinson, Jon O. Nelson, Todd Porter, Mark Sanford, and Denton Zubke and Senators David Hogue, Curt Kreun, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67th Legislative Assembly.

## **RED RIVER VALLEY WATER SUPPLY PROJECT**

### **Background**

Research suggests a strong possibility of a drought in the Red River Valley area within the next 5 decades. As the population in that area grows, the impact of such a drought would be even greater than the impact of droughts in prior years. The Red River Valley Water Supply Project was authorized by the Dakota Water Resources Act of 2000 to address this concern and provide a solution to the water supply and quality problems in the Red River Basin. That legislation also called for \$200 million of federal appropriations for the project. The Garrison Diversion Conservancy District, on behalf of the state, and the United States Bureau of Reclamation, on behalf of the federal government, executed a memorandum of understanding to begin studying these issues in 2000. After years of work, the United States Bureau of Reclamation issued a draft environmental impact statement for the project in December 2005. The draft included analyses of eight alternative plans for accomplishing the objectives of the project. After additional information was obtained, a revised draft environmental impact statement was released in January 2007. In the revised draft, both parties identified the Garrison Diversion Unit import to the Sheyenne River as the preferred alternative for bringing a reliable supply of quality drinking water to the Red River Valley area. This alternative includes the installation of a pipeline from Washburn to the Red River Valley area through the Sheyenne River north of Lake Ashtabula, which will act as a regulating reservoir. From there, water will be released into the Sheyenne River and flow into the Red River supplying water systems in the Red River Valley with a reliable supply of drinking water. This plan will provide flexibility for future expansion so water can be conducted to residents in central North Dakota as well.

In December 2007, the United States Bureau of Reclamation issued the final environmental impact statement for the project. The statement includes responses to public comments received on the prior iterations of the document, a final biological assessment prepared in compliance with the federal Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature. After due consideration and evaluation of technical, hydrologic, and design aspects, and water permitting and environmental impacts, the state and the United States Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative. However, the federal government did not approve the project. As a result, it is now a state and local project, and the Garrison Diversion Conservancy District is the lead state entity on the project.

Section 12 of Senate Bill No. 2020 stated it was the intent of the 66<sup>th</sup> Legislative Assembly that the SWC provide a grant up to \$13 million for the RRVWSP to initiate construction of Phase 1 of the project if four conditions were met, and provide up to \$17 million more in the 2019-21 biennium. The bill also stated state funding should be provided for the project based on a 75 percent state cost-share. The conditions precedent to receipt of funds for the project in the biennium were:

1. Any funding received for the completion of the planning and permitting process of the RRVWSP must result in the following accomplishments:
  - a. The completed RRVWSP plan document must include alternative selection, water supply needs, projected project costs, easement acquisitions, environmental regulation compliance to include issuance of a final national pollutant discharge elimination system permit, and acquisition of all other state and federal permits required for the construction of any project features intended to be constructed with funding provided during the 2017-19 biennium and the 2019-21 biennium;
  - b. A signed United States Bureau of Reclamation water service contract agreeing to a minimum of 165 cubic feet per second over a minimum of 40 years or equivalent to ensure an adequate water source for the project's needs;
  - c. Prioritized project features for Phase 1 construction; and
  - d. A recommendation of funding options for all phases of the RRVWSP.
2. The SWC reviewed any associated appeals or litigation before releasing any funds for the project.
3. The Budget Section received and approved certification from the SWC and the State Engineer that all items listed in the first condition have been accomplished before any funding received to initiate construction of Phase 1 prioritized project features is spent and construction of Phase 1 begins.
4. The Garrison Diversion Conservancy District provided quarterly progress reports on the RRVWSP to the committee during the 2019-20 interim.

### **Testimony and Committee Deliberation**

The committee received testimony at each of its meetings regarding the status of the four conditions the RRVWSP had to meet before receiving funds during the biennium. The committee was informed the SWC provided a memorandum to the Budget Section on September 15, 2020, certifying the Garrison Diversion Conservancy District met all four conditions, and the Budget Section approved the certification on September 17, 2020. Testimony indicated satisfaction of the criteria resulted in a release of \$43 million for the project. The committee received testimony the SWC received a request for \$16.4 million for RRVWSP costs associated with the Missouri River intake, transmission pipeline, Sheyenne River discharge structure, property acquisition, and planning, and the remainder of the \$43 million available for the project was deferred. Testimony indicated four state permits for the RRVWSP were received during the interim, half the necessary easements were secured for the project corridor, and construction is anticipated to be completed by 2023. The committee was informed the RRVWSP sponsors would request \$50 million in the 2021-23 biennium for construction costs.

Representatives of the Garrison Diversion Conservancy District testified Missouri officials indicated the State of Missouri would file a lawsuit against North Dakota over the RRVWSP because the project would take water out of the Missouri River. Testimony indicated Missouri initiated litigation regarding the project on February 4, 2020, by suing the United States Bureau of Reclamation, Army Corps of Engineers, the Garrison Diversion Conservancy District, and other parties, and claiming the Bureau of Reclamation's environmental review of the project was flawed. North Dakota intervened in the lawsuit, which is pending as of the date of this report. Missouri's brief supporting a motion for summary judgment is due in November 2020.

# **COLLABORATION WITH THE STATE WATER COMMISSION, PROGRAM EXPENDITURES, AND REPORTS ON THE FUND BALANCES OF PROJECTS, GRANTS, AND CONTRACTS**

## **Background**

The State Water Commission was created in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately \$500,000 to \$2,000,000 appropriated per biennium. The duties of the commission changed with creation of the resources trust fund in 1981. When the resources trust fund was created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project, which was the first state water project. Since then, the number and scope of water projects overseen and regulated by the SWC increased dramatically. The State Water Commission now serves many functions, including allocating the state's waters, overseeing dam safety, managing sovereign lands, and approving and funding water projects throughout the state. The State Water Commission has a budget of more than \$968,000,000 for the biennium and is supported by the Office of the State Engineer.

## **Testimony and Committee Discussion**

At each committee meeting, a member of the SWC provided an update on SWC operations and activities, and a representative of the Office of the State Engineer provided an update on the SWC budget and the status of projects funded by the SWC. The committee met with the SWC in September 2020. During the joint meeting, the committee and SWC received testimony regarding the resources trust fund; SWC budget status and projections; financial needs for ongoing and anticipated projects; analyses of projects using the life cycle cost analysis, economic analysis, and planning engineer reviews; the Fargo area flood control projects; the SWC water development plan for the 2021-23 biennium; the Northwest Area Water Supply Project (NAWS); anticipated water-related legislation for the 2021 legislative session; concerns regarding drainage statutes; and multiple water projects. The committee was informed water infrastructure in the state is aging, especially in rural areas.

Representatives of the Office of the State Engineer provided testimony on the usefulness of the life cycle cost analyses and economic analyses to help evaluate which projects should be funded and how much funding each project requires. Testimony indicated the SWC lowered the threshold at which project sponsors are required to provide an economic analysis to the SWC to receive state funds to \$200,000. Although Section 61-03-21.4 requires economic analyses be performed for projects costing more than \$1 million, it was noted the statute does not prevent the SWC from requiring economic analyses for less expensive projects. The committee also was informed the emergency clause for SWC appropriations, which was included in Senate Bill No. 2015 (2019), the Office of Management and Budget appropriation bill, allowed the SWC to begin funding projects early in the 2019 construction season and facilitated greater progress on water projects during the interim.

Representatives of the SWC and Office of the State Engineer testified regarding the impact the significant drop in oil prices in 2020 had on the resources trust fund and the SWC budget. The committee expressed concern regarding the budget and an expectation the resources trust fund may have a shortfall of approximately \$170 million for the biennium. At the June 2020 meeting, the committee requested and received testimony from project sponsors and representatives of interest groups regarding the amount of funding that could be deferred for projects in light of the anticipated resources trust fund shortfall. Representatives of the SWC asked the committee to make a recommendation regarding allocation of the available funds remaining in the SWC budget. The committee approved a motion in June 2020 recommending the SWC stringently evaluate the prioritization of projects for which funding was requested and consider funding only projects the SWC deemed critical. In September 2020, the committee was informed the revenue available to the SWC was \$140 million less than anticipated at the beginning of the interim, and \$84 million was available to be allocated to water projects at that time. Testimony also indicated approximately \$92 million was needed for projects approved by the SWC. The committee was informed the SWC water development plan for the 2021-23 biennium shows a need for \$668 million for 315 projects, but new projections show the resources trust fund will have \$269 million for the biennium. The committee was informed legislative intent in Senate Bill No. 2020 would have the SWC allocate \$153.2 million of the \$269 million to the FM Area Diversion project, the Souris River flood control project, and the RRVWSP. Testimony indicated the 10-year outlook for water project funding shows significant shortfalls in revenue received from the resources trust fund.

The committee discussed the use of released carryover funds from the 2017-19 biennium. The committee was informed although carryover funds do not have to be used for the same project for which the funds originally were allocated, the carryover funds must be used for projects in the same appropriation categories (or "buckets") for which the funds were appropriated originally.

## **FARGO FLOOD CONTROL AND FM AREA DIVERSION PROJECT**

### **Background**

In 2009 and 2011, the Legislative Assembly provided \$45 million and \$30 million respectively for Fargo flood control. In 2013, the Legislative Assembly provided \$100 million for the Fargo flood control project to provide a total of

\$175 million. In addition, the 2013 Legislative Assembly expressed legislative intent the state provide up to \$450 million for the project, with the remaining \$275 million to be provided over the next 4 bienniums. The 2013 Legislative Assembly limited the use of the funding designated for the Fargo flood control levee and dike protection until the Fargo flood control project received federal authorization, a project partnership agreement was executed, a federal appropriation was provided for project construction, and the budget for the Fargo flood control project was approved by the SWC. The 2015 Legislative Assembly provided an additional \$69 million for the Fargo flood control project and \$60 million for Fargo interior flood control projects, of which \$30 million is from the state disaster relief fund, to provide a total of \$304 million for flood protection in Fargo. The Legislative Assembly also included legislative intent to provide up to \$570 million for Fargo flood control projects, an increase of \$120 million. The \$120 million is to be used for Fargo interior flood control projects and requires 50 percent matching funds from the FM Area Diversion Authority. These funds may be expended only for Fargo interior flood control projects, including levees and dikes, until a federal appropriation is provided for construction of the Fargo flood control project, at which time it may be used for a federally authorized Fargo flood control project. The Legislative Assembly also included legislative intent that funding for the Fargo flood control project will end June 30, 2021, if a federal appropriation has not been provided by that time. The 2015 Legislative Assembly provided legislative intent that the remaining funding be made available in equal installments over the next 4 bienniums. Money from the Cass County sales tax has been used for levy work in small communities and for retention.

In 2017, the Minnesota Department of Natural Resources indicated it would not approve a necessary permit for the Fargo flood control projects. In September 2017, a federal judge issued a preliminary injunction halting most work on the project, including land acquisition, design, procurement, cultural mitigation studies, and construction. The governors of North Dakota and Minnesota created a task force to develop a mutually acceptable plan, known as Plan B, for the project. A technical advisory group and policy group also were formed to work on the development of the plan. In March 2018, the FM Area Diversion Authority submitted Plan B to the Minnesota Department of Natural Resources for a permit.

In 2019, the Legislative Assembly appropriated \$65.5 million for the Fargo area flood control projects and expressed the legislative intent to provide no more than \$750 million for the project in total. Of the \$750 million, \$371 million had been made available for the project in previous bienniums. Of the remaining \$379 million, the Legislative Assembly expressed the intent \$66.5 million should be provided in each of the bienniums through the 2027-29 biennium, and \$47 million should be provided in the 2029-31 biennium.

### **Testimony and Committee Discussion**

The committee received testimony from representatives of the FM Area Diversion Authority at each meeting. The committee was informed the diversion authority hired an executive director to oversee operations in 2019. The diversion authority also organized a tour of the project for committee members to see the progress made on construction of project features. The committee received testimony federal contracts for the inlet control structure and the Wild Rice control structure were awarded, and construction was progressing on those structures. Testimony also indicated Plan B modifications to in-town protections were almost complete, the Office of the State Engineer had approved the mitigation plan for the project, and the Federal Emergency Management Administration (FEMA) provided a conditional letter of map revision. The committee was informed the FEMA letter confirmed 11,000 homes in North Dakota would no longer be in a flood plain and flood insurance would no longer be required for the homes after the project is complete.

A representative of the diversion authority testified it will request \$66.5 million from the state during the 2021-23 biennium. Testimony indicated the diversion authority also plans to request the Legislative Assembly commit to providing \$870 million in total for the project rather than the \$750 million the 2019 Legislative Assembly intended as the total amount of state funding to provide for the project. The committee received testimony the diversion authority anticipates receiving a total of \$900 million from the federal government for the project over several years, but the funds are not guaranteed. Testimony indicated the United States Army Corps of Engineers (USACE) may not be appropriated sufficient funds for the project or could allocate appropriated funds to other projects. Testimony indicated \$100 million was appropriated to the St. Paul district of the USACE and designated for the project this biennium. The committee was informed the diversion authority applied for a Water Infrastructure Finance and Innovation Act loan from the United States Environmental Protection Agency to help pay for the project, and the loan would require state matching funds. The committee received testimony in June 2020 that \$44 million would satisfy the project's immediate needs in light of the SWC budget shortfall, and the remainder of the funds intended for the project this biennium could be deferred.

Testimony indicated 406 properties were acquired for the project at a cost of \$282.3 million as of September 2020, but approximately 80 properties still need to be acquired. Testimony indicated six properties will be acquired through "quick take" eminent domain proceedings after September 2020. The committee was informed the project has a balance of \$83.2 million, which the diversion authority plans to use for future property acquisitions. Testimony indicated property appraisals comply with federal requirements, and audits of the process have not shown a failure to meet the requirements.



The committee was informed the contract for the public-private partnership project (P3 project) comprising part of the flood control project has not been awarded. Testimony indicated the final request for proposals is anticipated to be released in January 2021, and the P3 project developer will be selected in April 2021. The committee received testimony the diversion authority will not know the costs of the P3 project until late in the legislative session, and the costs will impact the request for funding. The committee expressed concern the costs will not be known when the SWC appropriations bill is introduced in 2021 and during hearings on the bill.

The committee received testimony Minnesota provided \$7 million for the project. Testimony indicated additional Minnesota funds would be provided through the Minnesota Department of Natural Resources hazard mitigation program. A representative of the diversion authority informed the committee a Minnesota water resource district initiated an administrative lawsuit regarding a permit issued by the department, and as of September 2020, the administrative law judge had 90 days to provide a recommendation regarding the permit to the department.

### **SOURIS RIVER BASIN FLOOD CONTROL**

The committee's meeting in Minot and tour of the project were canceled due to the Coronavirus (COVID-19) pandemic. The committee received an update on the Souris River basin flood control project at another meeting. Testimony indicated construction was continuing on Phase 1 of the project while Phases 2 and 3 were nearing completion. The committee received testimony all 10 phases of the project could be completed in 15 years if sufficient funding is available for construction. Testimony also indicated \$46 million of the \$82.5 million appropriated for the project this biennium would be used inside Minot, and the remaining \$36 million would be used outside Minot. The committee was informed Minot voters approved an increase in the local sales tax, and Minot may need to issue bonds to pay for the local cost-share for the project. In June 2020, the committee received testimony the funding request for the project for the biennium could be reduced to \$49.5 million in light of the SWC budget shortfall.

### **NORTHWEST AREA WATER SUPPLY PROJECT**

The committee received testimony from a representative of the Office of the State Engineer regarding the status of NAWS, which will provide water to approximately 81,000 people in Burke, Ward, Renville, Bottineau, and McHenry Counties. The project has been in development for at least 18 years but was interrupted by lawsuits initiated by Manitoba and Missouri which were resolved in 2017. The committee was informed contracts have been awarded for several portions of the project, and construction continues on several phases of the project. The project is funded by the Municipal, Rural, and Industrial Water Supply Program, which is a federal grant program administered by the SWC; a local cost-share from Minot; and state funds. The committee received information the statutorily created NAWS Advisory Council has not been holding meetings, and the committee expressed concern regarding the lack of meetings.

### **ALTERNATIVE FUNDING FOR WATER PROJECTS**

The committee received testimony regarding multiple sources of funding other than the SWC for water projects. Testimony indicated Water Infrastructure Finance and Innovation Act loans are available for flood control projects through the United States Environmental Protection Agency. Testimony also indicated the United States Department of Agriculture continues to provide funding for water projects, including projects for Indian tribes, through its Office of Rural Development. The committee received testimony regarding the amount of loans and grants the Office of Rural Development provided to water projects in the state. The committee was informed the Office of Rural Development provides guidelines for project sponsors regarding appropriate levels of engineering fees for projects.

The committee also received testimony regarding funding assistance available from state entities other than the SWC. The committee was informed funding is provided through the Department of Emergency Services (DES) hazard mitigation programs for flood protection and water infrastructure. Testimony indicated DES provided \$180.6 million through the hazard mitigation programs since 2009. The committee also received testimony state funding is available for water projects through the drinking water state revolving fund program and clean water state revolving fund program. The programs are operated by the Department of Environmental Quality, which receives some of the funds for the programs from the United States Environmental Protection Agency. Testimony also indicated projects eligible for the programs include new projects, projects to repair or replace equipment or systems, and refinancing projects.

### **TRIBAL INTERESTS IN WATER**

The committee received testimony from representatives of the Standing Rock Sioux Tribe, Turtle Mountain Band of Chippewa Indians, and the Indian Affairs Commission regarding tribes' needs for water projects. Testimony indicated the tribes would like increased communications with members of the Legislative Assembly and the SWC regarding the allocation of water, legal rights to water, and water project funding. Currently, the SWC may not provide funding for water projects sponsored by tribes. The committee was informed there is a need for the SWC to be able to provide state funds for tribal water projects. Testimony also indicated tribes are working with federal agencies and North Dakota's Congressional delegation to address funding needs.

## **WESTERN AREA WATER SUPPLY PROJECT**

The committee received testimony from representatives of the Western Area Water Supply Authority regarding the status of the Western Area Water Supply project. Testimony indicated the project sponsors planned to use \$22 million of the \$40 million to be received from the state during the biennium to expand supply, treatment, and transmission capabilities. Testimony indicated planning, permitting, and design of the expansion will take 4 years. In June 2020, representatives of the Western Area Water Supply Authority testified state funding for the project for the biennium could be reduced to \$30.4 million in light of the SWC budget shortfall.

## **SOUTHWEST PIPELINE PROJECT**

The committee received information regarding the status of the Southwest Pipeline Project, which is owned by the state and operated and maintained by the Southwest Water Authority. Testimony indicated funds for the report were included in the capital assets "bucket" of the SWC appropriations bill, and project administrators anticipated \$25.5 million for the biennium to upgrade project appurtenances, increase storage capacity, increase main transmission line capacity, expand rural distribution service areas, and add other system improvements. In June 2020, representatives of the project testified the immediate needs of the project could be funded with \$12 million to \$17 million in light of the SWC budget shortfall.

## **MUNICIPAL AND RURAL WATER SUPPLY PROJECTS**

The committee received testimony from representatives of the League of Cities and North Dakota Rural Water Systems Association regarding municipal and rural water supply projects. Testimony included information regarding the projects' statuses and funding needs. The representatives also testified regarding efforts to regionalize water supply systems. In June 2020, the representatives also testified \$5.5 million for municipal projects and \$7 million for rural water projects could be released in light of the SWC budget shortfall.

## **REPORTS**

### **Red River Valley Water Supply Project**

The committee received reports from the RRVWSP in August 2019, December 2019, June 2020, and September 2020. Although Section 14 of Senate Bill No. 2020 required the project sponsors to provide quarterly reports to the committee, the COVID-19 pandemic prevented the committee from meeting in the 1<sup>st</sup> quarter of 2020. The reports provided information on the project's status, budget, and plans, and anticipated requests for state funds.

### **Pilot Project Implementing a Basinwide Water Plan**

Section 15 of Senate Bill No. 2020 authorized the SWC to provide up to \$1 million for a pilot project to implement a basinwide water plan identifying water conveyance, flood control, and other water projects for the basin. To qualify for the funding, all the water resource districts, including joint water resource districts, in the basin must develop the plan and jointly apply for the funding. The bill required the SWC to report on the results of the pilot project by August 1, 2020. However, no qualifying project was submitted to the SWC for consideration.

## **BASINWIDE JOINT WATER RESOURCE DISTRICTS STUDY**

### **Background and Testimony**

Senate Concurrent Resolution No. 4009 (2019) required the committee to study the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs. Water resource districts have responsibilities to plan, construct, maintain, control, repair, or issue permits for a wide range of water projects, including dams, drainage systems, water conservation projects, water distribution and supply systems, dikes, culverts, and flood control projects. Members of the 2017-18 Water Topics Overview Committee expressed interest in having these responsibilities administered on a basinwide basis so water could be managed more efficiently.

The committee received information all land in the state is apportioned into 90 water resource districts, including at least 28 joint water resource districts, and each district has a board comprised of members appointed by county commissioners. Districts that cross county lines have board members appointed by multiple boards of county commissioners according to a formula in Section 61-16-07. Each water resource board develops an annual budget, and based on the water resource district's budget, each board of county commissioners may levy a tax up to four mills on each dollar of taxable valuations in the county or portion of county for the water resource district in which the county or portion of the county is included. A water resource district may issue warrants bearing interest at a rate set by the board.

The committee was informed water resource boards have statutory responsibilities to cooperate and plan on a basinwide basis. Section 61-16.1-10 requires water resource boards in a common river basin to meet jointly at least twice per year, cooperate and lend mutual assistance, jointly exercise their authority "to effectively resolve the significant and common water resource management problems" in the basin, and jointly develop a comprehensive plan for the river basin or region.

Water resource districts have authority under Section 61-16.1-11 to enter agreements with each other to form joint water resource districts. To form a joint water resource district, the relevant districts must provide to the SWC a petition signed by a majority of the water resource district's board members or no less than half of the landowners in each district. A joint water resource district may receive funds from the member districts or through taxes levied especially for the joint district in excess of any taxes levied for the member districts. Information provided to the committee indicated there is no statutory limit on the amount of taxes to which an individual parcel of land may be subject for water resource districts.

### **Conclusion**

The committee makes no recommendation regarding its study of the desirability or feasibility of forming basinwide joint water resource districts.

# WORKERS' COMPENSATION REVIEW COMMITTEE

North Dakota Century Code Section 54-35-22 established the Workers' Compensation Review Committee. The committee is directed to review workers' compensation claims brought to the committee and determine whether changes should be made to the workers' compensation laws. Section 54-35-22 provides for a six-member committee composed of two members of the Senate appointed by the Senate Majority Leader, one member of the Senate appointed by the Senate Minority Leader, two members of the House of Representatives appointed by the House Majority Leader, and one member of the House of Representatives appointed by the House Minority Leader. In addition to the statutory directive to review workers' compensation claims, the committee was assigned six statutory directives:

- Section 65-02-30 requires the committee select up to four elements to be included in the quadrennial performance evaluation of Workforce Safety and Insurance (WSI);
- Section 65-02-30 requires the committee receive the performance evaluation report and review any actions taken resulting from the performance evaluation report;
- Section 65-03-05 requires the committee to receive a biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03;
- Section 65-05.1-06.3 directs WSI to include in an annual report to the committee status reports on WSI's current pilot programs in accordance with Section 65-01-19;
- Section 65-01-19 directs WSI to include in an annual report to the committee a summary of findings and recommendations of any current pilot programs and pilot programs completed within the previous 12 months; and
- Section 54-57-09 requires the committee to receive a quarterly report from the Office of Administrative Hearings (OAH) and WSI on statistical information regarding results under the case processing standards and policies.

Committee members were Representatives Dan Ruby (Chairman), Mary Adams, and George Keiser and Senators JoNell A. Bakke, Randy Burckhard, and Dave Oehlke.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2020. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly.

## CLAIM REVIEW General Background

Workers' compensation laws in North Dakota are found primarily in North Dakota Century Code Title 65. The administrative rules adopted by WSI are found in North Dakota Administrative Code Title 92. Section 12 of Article X of the Constitution of North Dakota specifically addresses the state's workers' compensation agency, providing for a constitutional continuing appropriation of the workers' compensation fund for the purpose of paying workers' compensation benefits.

Section 54-35-22 established the Workers' Compensation Review Committee effective August 1, 2005, and the law originally was set to expire August 1, 2007. The expiration clause was repealed in 2007. The law requires the committee to meet once each calendar quarter unless there is no claim to review. The committee operates according to the laws and procedures governing the operation of Legislative Management interim committees.

### Interim History

The following is a history of the committee's activities relating to claim reviews conducted under Section 54-35-22 and legislative recommendations made:

Interim	Claims Reviewed	Bills Recommended
2005-06	11	3
2007-08	15	9
2009-10	4	7
2011-12	2	4
2013-14	1	2
2015-16	7	1
2017-18	10	0

### Claims Review Procedure

Based on the protocol and application packet used during the 2017-18 interim, the committee established a procedure and protocol for conducting its charge of reviewing claims. The revised application packet included a cover letter

explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

To notify the public of the committee's activities and to solicit injured employees to submit claims for review, the committee published the application packet on the legislative branch website and mailed a copy of the application packet to injured employees who recently used the claim review services of WSI's Decision Review Office. The committee adopted the following procedure, which was used during previous interims to determine eligibility for a claim review and to prepare the injured employee for the committee meeting at which the claim is reviewed:

1. An injured employee submits to the Legislative Council office a completed "Release of Information and Authorization" form and a "Review Issue Summary" form on which the applicant summarizes the issues the applicant wants the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwards a copy of the application information to an assigned ombudsman at WSI, who reviews the application to make a recommendation regarding whether:
  - a. The applicant was an injured employee or the survivor of an injured employee;
  - b. The workers' compensation claim was final; and
  - c. All of the administrative and judicial appeals were exhausted or the period for appeal had expired.
3. Following this review, the ombudsman contacts the Legislative Council staff to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, the Legislative Council staff contacts the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the Legislative Council staff contacts the injured employee and the ombudsman to begin the case preparation.
5. Regardless of whether the injured employee accepted the assistance of the ombudsman, the ombudsman prepares a summary of the case to present at the committee meeting.
6. At the injured employee's discretion, the ombudsman assists the applicant in organizing the issues for review.
7. The ombudsman prepares a case review packet and includes the packet in a binder of information prepared for each committee member, Legislative Council staff, and the WSI representative. Although these binders are distributed at each committee meeting, the binders remain the property of WSI and are returned at the completion of each committee meeting.
8. Before each committee meeting at which a claim was to be reviewed, the ombudsman meets with Legislative Council staff to review the case summary and workers' compensation issues to be raised.
9. Upon receipt of these workers' compensation issues, Legislative Council staff notifies a WSI representative of the identity of the injured employee who will be appearing before the committee for a case review, and as appropriate, the basic issues to be raised by the injured employee.

The committee established the following committee meeting procedure, which was followed for the claims reviewed by the committee:

1. Committee members have an opportunity before and during the committee meeting to review the binder of claim review information and to review the injured employee's WSI electronic records.
2. The ombudsman summarizes the injured employee's case.
3. The injured employee presents the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues are presented by the injured employee, a representative of the injured employee, or both of these individuals.
4. One or more representatives of WSI comments on the workers' compensation issues raised.
5. The committee members have an opportunity to discuss the issues raised.

Each claim reviewed is allocated a block of time during which the committee conducts the initial claim review. Following the initial review, the committee retains the authority to continue to discuss issues raised as part of the review. The committee may request additional information on specific issues and may review this information at a future meeting. During a committee meeting at which a claim is reviewed, a WSI representative is available to access the injured employee's WSI records electronically.

## First Claim

### Issues for Review

The injured employee reported WSI denied the employee's chronic opioid therapy for treatment of his chronic lower back pain stemming from a work injury to the employee's lumbar spine sustained in 1986. Workforce Safety and Insurance denied the employee's chronic opioid therapy because the employee tested positive for tetrahydrocannabinol (THC) while undergoing chronic opiate therapy. The injured employee provided the following issue for consideration:

- Injured employees should be able to use THC for pain management as opiate support while receiving chronic opioid therapy to assist in medically withdrawing from opiate use with the goal of having zero opiates prescribed.

### Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-05-39, which provides the relevant criteria for the injured employee and for the prescribing physician. To qualify for chronic opioid therapy, an injured employee may not be using illegal substances or abusing alcohol, and must be compliant with the treatment protocol. Section 65-05-39 grants a prescribing physician or WSI the right to request an injured employee on chronic opioid therapy be subject to drug testing, and failure of the test or of timely compliance with the request may result in termination of chronic opioid therapy coverage. When the injured employee tested positive for THC, medical marijuana was not a medically accepted practice in North Dakota.

### Committee Considerations

Committee members considered the following issues raised by the injured employee:

- THC is a federal Schedule 1 drug and is not viewed by the federal government as a credible form of medical treatment.
- The initiated measure decriminalizing THC for medicinal purposes was approved by over 70 percent of North Dakota's voting public.
- The injured employee's situation was not a medical THC issue, but simply related to the presence of THC before THC was a medically accepted practice in North Dakota.

## Second Claim

### Issues for Review

The injured employee reported an administrative law judge affirmed a WSI order relating to termination of benefits for false statements and physical misrepresentations made by the injured employee. The injured employee did not appeal the decision to district court and the order became final. The injured employee provided the following issues for consideration:

- WSI should be more transparent and helpful to injured employees.
- WSI should have been more responsive to the injured employee when he contacted WSI with questions and concerns.
- WSI should be overseen by the North Dakota Insurance Commissioner for decisions and accountability.
- An injured employee should have the right to face the accuser or witness when accused of false statements and physical misrepresentations.

### Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-05-39, which provides it is a Class A misdemeanor for an injured employee who claims benefits or payment for services to misrepresent that individual's physical condition willfully, including deceptive conduct that misrepresents that individual's physical ability. An injured employee who violates Section 65-05-39 forfeits any additional benefits relative to that injury. Because the penalty is so severe, WSI typically includes photographs and video recordings when writing fraud orders terminating benefits.

### Committee Considerations

Committee members considered the following issues raised by the injured employee:

- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.
- There may be methods through which the system could be improved to facilitate better communication between the injured employee and WSI.
- WSI always should use photographic and video evidence when terminating benefits due to allegations the injured employee made false statements or intentionally misrepresented the physical injury.

## Third Claim

### Issues for Review

The injured employee reported WSI issued an order awarding temporary partial disability benefits on a retained earnings capacity of \$108.75 per week and determined retraining was not a viable option for the injured employee due to work injury limitations. The injured employee is scheduled to have exhausted the full 5 years of partial disability benefits available as of October 2021. The injured employee provided the following issues for consideration:

- The claims process takes too long to resolve.
- Injured employees are given 30 days to respond to a decision issued by WSI, yet WSI appears to not have any deadlines to issue decisions relating to claims.
- The system should be designed to take care of the injured employee and do what is right for the injured employee.
- The 5-year limitation on temporary partial disability benefits is arbitrary because an injury or pain does not disappear within a specified time.

### Workforce Safety and Insurance Response

The WSI representative reported the injured employee's claim involved short-term employment and pre-existing issues. Workforce Safety and Insurance had to determine whether the flare up was caused by the employee's injury by the employment or by a pre-existing condition. If the flare up was caused by a pre-existing condition, WSI had to determine whether the pre-existing condition was worsened substantially or progressed substantially as a result of her employment.

### Committee Considerations

Committee members considered the following issues raised by the injured employee:

- WSI may have too few claims analysts which prolongs the time it takes for a claim to be processed.
- In 1991 a 5-year cap was placed on temporary partial disability benefits, and in 2006 a 2-year cap was implemented on temporary total disability benefits for a total of 7 years of benefits combined.
- WSI's responses to injured employees may not be timely.
- The system could be improved to facilitate better communication between WSI and injured employees.

## Fourth Claim

### Issues for Review

The injured employee reported his second reapplication for medical and disability benefits related to his injured lumbar spine was denied because WSI determined the injured employee did not have any loss of earnings. The medical review concluded the injured employee had a significant change in his compensable work injury but the injured employee's employer did not provide WSI with the requested tax and wage information to see if the evidence supported a loss of earnings due to the significant change. The injured employee provided the following issues for consideration:

- The laws pertaining to WSI are difficult to read and understand.
- The injured employee did not understand the process fully, whereas WSI is very experienced and knowledgeable about the entire process, resulting in an unfair outcome.
- Waiting 30 to 45 days to get mailed correspondence back from WSI regarding surgical procedures and other filings is unacceptable.
- WSI should have been more responsive to the injured employee when he contacted WSI with questions and concerns.

### Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-05-08, which provides WSI with the standards to follow when someone previously has received disability benefits, there has been a break in benefits, and disability benefits are being requested again. Reapplications have two statutory requirements. First, the injured employee must show a significant change in the compensable medical condition. Second, the injured employee must show an actual wage loss caused by the significant change. Workforce Safety and Insurance was unable to secure the required payment information from the injured employee's employer to satisfy the requirements of the second prong necessary for approving a reapplication.

### Committee Considerations

Committee members considered the following issues raised by the injured employee:

- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.

- The system could be improved to facilitate better communication between the injured employee and WSI.
- The reapplication process could be improved to allow for an injured employee to submit the requested payment information in cases in which an employer is not providing WSI with sufficient or satisfactory payment documents in a timely manner.

### **Fifth Claim**

#### **Issues for Review**

The injured employee reported WSI issued a notice of intention to discontinue wage loss benefits due to her vocational noncompliance. Workforce Safety and Insurance issued an order indicating no permanent impairments benefits were payable in connection with the injured employee's work injuries because the percentage of whole body impairment did not meet the statutory requirement of 14 percent. The injured employee provided the following issues for consideration:

- WSI typically denies benefits for the treatment of depression and other mental injuries.
- WSI selects medical providers who provide opinions favorable to WSI.
- Injured employees are unable to locate or attain adequate legal representation.
- WSI should improve its administrative process and methods to ensure compliance with confidentiality requirements.
- The permanent partial impairment determination should include factors such as the effects of medications and ailments hindering bodily functions and abilities.
- The 5-year limit on partial disability is too short when considering how injuries impact an employee's earning ability.

#### **Workforce Safety and Insurance Response**

The WSI representative reported WSI is bound by statute to pay only for mental health conditions caused by the physical condition. It has been challenging to find functional capacity evaluation and independent medical examination providers within the state. Pilot programs and other initiatives have been attempted to increase the availability of those providers. Statute requires WSI to use certified evaluators for permanent partial impairment evaluations and the permanent partial impairment percentages are in accordance with the American Medical Association guidelines.

#### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- Multiple injured employees have raised the issue of inability to access or afford legal representation.
- Vocational rehabilitation plans may not consider an injured employee's mental and physical abilities adequately.
- Vocational rehabilitation may not address deteriorating medical conditions and practical return-to-work opportunities adequately.

### **Sixth Claim**

#### **Issues for Review**

The injured employee provided an overview of the challenge in finding North Dakota attorneys to handle workers' compensation claims and reported WSI should improve assessing injured employee claims because every case is unique. The injured employee provided the following issues for consideration:

- WSI has access to legal counsel while the injured employee does not have equivalent access to legal counsel. Few attorneys in the state are willing to represent injured employees.
- Injured employees choose not to pursue appeals of WSI decisions because of the difficulty of finding legal representation and the perception is it is unlikely WSI decisions will be overturned on appeal.
- More attorneys should be available to represent injured employees. The system does not recognize an injured employee's needs for legal representation. Without an attorney, the injured employee is unable to receive fair treatment.
- The injured employee did not understand the process fully, whereas WSI is very experienced and knowledgeable about the entire process, resulting in an unfair outcome.

#### **Workforce Safety and Insurance Response**

The WSI representative reported WSI has revised its notice of decision so when a permanent impairment evaluation is approved and the injured employee is notified about the evaluation approval, WSI lists in the approval letter the body



parts that will be examined at the evaluation. Injured employees are given an appeal period to notify WSI of any additional body parts the injured employee would like examined.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- The inability of injured employees to find or afford legal representation is an issue raised regularly by injured employees.
- Section 65-02-08 provides if an injured employee has a successful claim or appeal, whether at the administrative law level or in court, WSI must pay the attorney. The actual amounts reimbursed are specified within North Dakota Administrative Code and the amounts are reviewed and adjusted every other year.

## **Seventh Claim**

### **Issues for Review**

The injured employee reported after WSI issued a notice of decision accepting his reapplication for disability benefits, WSI notified him that because his Social Security retirement date was January 2018, he would not be eligible for disability, and the temporary total disability benefits of \$14,182.86, he received from July 1, 2014, through January 13, 2015 was paid in error. Workforce Safety and Insurance addressed the overpayment by entering a stipulation with the injured employee, indicating the overpayment would be reduced to \$10,000.00, and the overpayment would need to be repaid in full by December 31, 2019. The injured employee provided the following issue for consideration:

- Depending on when an individual's birthday is and when the individual applies for workers' compensation benefits, there is an unforeseen circumstance wherein the individual may not receive benefits.

### **Workforce Safety and Insurance Response**

The WSI representative reviewed Section 65-05-09.3, which provides the retirement presumption may or may not coincide with actual retirement. The retirement presumption was enacted in 1995 and established a presumed retirement age. An individual older than the presumed retirement age is unable to collect disability benefits, and accepting Social Security retirement unless accepted before full attainment of Social Security retirement is irrelevant. Section 65-05-09.3 would be relevant in a case in which an individual has full retirement at age 65 but starts to receive retirement benefits at age 62. If the medical evidence indicated the injured employee's injury was a new injury, it would have been processed as a new injury. If an individual continues to work beyond the presumed retirement age and suffers a new injury, the individual is entitled to disability benefits not to exceed 3 years. If the injured employee's injury had been a new injury, he would have been entitled to up to 3 years of disability benefits.

House Bill No. 1188 (2019) provided an injured employee who has received disability benefits that have been discontinued before retirement is eligible to receive disability benefits after retirement if the injured employee meets the reapplication criteria. With the enactment of House Bill No. 1188, a claim similar to the injured employee's claim now is covered.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- Whether the presumed retirement age applies to reapplications postretirement.
- The Workers' Compensation Review Committee is not authorized to make any formal decisions on any workers' compensation claims and cannot change an existing decision made by WSI.

## **Eighth Claim**

### **Issues for Review**

The injured employee reported when he reached maximum medical improvement he completed a two-part permanent partial award evaluation and was found to have a 6 percent whole person impairment as a result of the work injury to his left eye. Workforce Safety and Insurance denied permanent partial impairment benefits because his 6 percent whole person impairment did not meet the threshold required for a monetary award. The injured employee's letter requesting assistance from the Decision Review Office was untimely as the 30-day time limit had expired. The injured employee reported he sent his appeal timely to WSI but did not receive WSI's order denying permanent partial impairment due to an address change. The injured employee provided the following issues for consideration:

- WSI should be more transparent and helpful to injured employees.
- The WSI claims process should be changed to provide more personal insight to a claimant so a claimant is aware a claimant's decision to accept a decision by WSI and not appeal the decision precludes any further or future way of resolving or disputing the decision.

- Claimants should be provided instructional tools and service resources to better inform a claimant of claimant rights and enhance the claimant's awareness of the WSI claims process.
- WSI's responses to injured employees may not be timely.

### **Workforce Safety and Insurance Response**

The WSI representative reviewed Section 65-05-12.2 pertaining to permanent partial impairment benefits. The permanent partial impairment benefit is based on the *Guides to the Evaluation of Permanent Impairment*, American Medical Association, (6<sup>th</sup> edition). The guide illustrates the human body as a chart and breaks the body into percentages, quantifies the loss of use of every part of the human body, and factors it into a total percent loss. The payment is derived from permanent partial impairment, which is a stand-alone payment, and is unrelated to wage-loss or medical benefits. Permanent partial impairment is an attempt to compensate for the loss of use for an individual and the rating system in North Dakota starts with awards beginning at 14 percent whole person impairment.

The continuing jurisdiction statute authorizes WSI to extend the 30-day allotted time frame in which injured employees and employers have to notify WSI of an intent to appeal or request reconsideration of a decision.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.
- Claimants may not receive orders or decisions in a timely manner allowing the claimant to appeal an order or request reconsideration within the 30-day allotted time frame.
- Minnesota's permanent partial impairment evaluation system radically differs from North Dakota's system because Minnesota uses a different set of American Medical Association guides.

## **Ninth Claim**

### **Issues for Review**

The injured employee reported his temporary partial disability benefits set him up to fail because his hands are too severely injured and deformed for him to seek employment in good faith. His frostbite developed into complex regional pain syndrome that now renders it impossible for him to get more than 2 hours of sleep at night and he does not understand how WSI reasonably can expect him to seek employment effectively. His benefits end in January 2021. The injured employee provided the following issues for consideration:

- WSI's doctors do not have the injured employee's interests at the forefront because the doctors work for WSI.
- Vocational rehabilitation plans may not consider an injured employee's physical abilities and pain adequately.
- WSI should focus on the treatment of injured employees, not benefits.
- The system does not compensate injured employees adequately for ongoing pain resulting from injuries.

### **Workforce Safety and Insurance Response**

The WSI representative reviewed Section 65-05.1-01 pertaining to rehabilitation services and it is the goal of vocational rehabilitation to return the injured employee to substantial gainful employment with a minimum of retraining as soon as possible after an injury occurs. The injured employee was rated at 0 percent whole person impairment and the rating system in North Dakota starts with awards beginning at 14 percent whole person impairment. Permanent partial impairment awards based solely on pain likely are prohibited because pain cannot be measured objectively. In accordance with statute, temporary partial disability benefits may not exceed 5 years.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- The issues of pain management and severe or ongoing pain resulting from injuries are issues constituents commonly raise with legislators.
- Vocational rehabilitation may not address deteriorating medical conditions and practical return-to-work opportunities adequately.
- Vocational rehabilitation plans should be designed in collaboration with the injured employee.

## Tenth Claim

### Issues for Review

The injured employee reported he was assessed initially at 24 percent whole person impairment based on an internal permanent partial impairment review by WSI because of his work injury. He was then denied permanent partial impairment benefits by WSI because he was assessed a 9 percent whole person impairment for his right elbow after undergoing a permanent partial impairment evaluation, which is below the 14 percent whole person threshold for a monetary impairment award. The injured employee provided the following issues for consideration:

- If permanent partial impairment evaluations are based on the *Guides to the Evaluation of Permanent Impairment*, American Medical Association, (6<sup>th</sup> edition), an evaluation should not be able to go from an initial assessment of 24 percent whole person impairment to 9 percent whole person impairment. The impairment rating should remain consistent.
- Decisions to reduce whole person impairment ratings appear to be a judgment call by WSI rather than a medical decision based on knowledge and the *Guides to the Evaluation of Permanent Impairment*, American Medical Association, (6<sup>th</sup> edition).

### Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-05-12.2, which relates to permanent partial impairment benefits, and is based on the *Guides to the Evaluation of Permanent Impairment*, American Medical Association, (6<sup>th</sup> Edition).

Section 65-05-12.2(3) provides an injured employee is entitled to compensation for permanent impairment only for those findings of impairment that are permanent and which were caused by the compensable injury, meaning an injured employee will not get a permanent impairment award for an injury that heals or could improve. Section 65-05-12.2(4) provides an injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement, meaning an injured employee will not qualify for an award until the employee has reached the maximum medical improvement and there is an objectively measurable permanent injury suffered by the injured employee.

A claim can be reduced or increased during an audit. When WSI makes a determination on an award amount, the injured employee may use the appeals process to provide additional input if the worker disagrees with WSI's findings and conclusion.

### Committee Considerations

Committee members considered the following issue raised by the injured employee:

- WSI should provide an injured employee with better notice explaining a whole person impairment rating may be reduced or increased after an audit and the injured employee's right to appeal such a decision.

## Eleventh Claim

### Issues for Review

The injured employee reported WSI denied permanent partial impairment benefits for her headaches, chronic pain, complex regional pain syndrome, and depression, which were consequential conditions resulting from the 2001 crush injury she sustained to her right hand and right upper extremity. The injured employee provided the following issues for consideration:

- WSI awards should provide monthly payments for chronic pain.
- Chronic pain should be considered compensable when caused by the work-related injury.

### Workforce Safety and Insurance Response

The WSI representative reviewed Section 65-05-12.2 pertaining to permanent impairment evaluations. Section 65-05-12.2(4) provides an injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. Section 65-05-12.2(7) provides an injured employee is not entitled to a permanent impairment award due solely to pain. Permanent partial impairment awards based solely on pain likely are prohibited because pain cannot be measured objectively.

### Committee Considerations

Committee members considered the following issues raised by the injured employee:

- An injured employee who believes a condition has undergone a substantial worsening can request a reevaluation of the initial impairment rating and if the request is denied, the denial is appealable.
- If a treatment or procedure becomes available that would alleviate chronic pain, WSI would cover the cost of the treatment or procedure because it is medically related to the underlying work-related injury.

## Twelfth Claim

### Issues for Review

The injured employee reported WSI issued a notice of decision denying benefits because of the lack of evidence of an acute injury to his lumbar spine resulting from his work accident. All diagnostic studies revealed underlying and pre-existing degenerative conditions. The injured employee provided the following issues for consideration:

- WSI's doctors do not have the injured employee's interests at the forefront because the doctors work for WSI.
- Since every employee is going to have some degree of degeneration, WSI should not be able to deny responsibility claiming a pre-existing condition.

### Workforce Safety and Insurance Response

The WSI representative reported a compensable injury must be an accident arising out of and in the course of hazardous employment and must be established by medical evidence supported by objective medical findings. Under Section 65-01-02(11), an injury attributable to a pre-existing injury, disease, or other condition, including when employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition, is excluded from being considered a compensable injury unless the employment substantially accelerates its progression or substantially worsens its severity. Magnetic resonance imaging indicated the injured employee had a degenerative disease from his L1 to S1 vertebrae. The medical evidence was reviewed by WSI's internal physician who determined the work accident acted as a trigger to make the prior injury symptomatic but the accident did not accelerate the prior injury.

### Committee Considerations

Committee members considered the following issue raised by the injured employee:

- The issues of pre-existing conditions and degenerative conditions are issues constituents commonly raise with legislators and are especially relevant as the workforce ages.

## WORKFORCE SAFETY AND INSURANCE STATUS UPDATES

To keep apprised of current events at WSI, the committee received status updates on topics raised as part of the claim review process.

### Dual Filing

In response to issues raised during the claim review process, the committee reviewed WSI's dual filing guidelines. The committee was informed if a claim for workers' compensation benefits is compensable in North Dakota and a claim for workers' compensation benefits for the same injury or death is filed in another state, WSI may defend at WSI's expense any claim, proceeding, or suit against a North Dakota-covered employer. Workforce Safety and Insurance may not defend a claim for workers' compensation benefits, proceeding, or suit if that claim for workers' compensation benefits is not compensable in North Dakota.

The committee received testimony reviewing WSI's coverage of claims within North Dakota and was informed issues arise when employers or their employees leave North Dakota for business purposes, such as for trade shows, sales calls, or service calls. From WSI's perspective, there is not any workers' compensation coverage when an employer or employee leaves North Dakota. If an out-of-state injury claim comes back to North Dakota and the injured employee wants North Dakota benefits, WSI will adjudicate that claim. Workforce Safety and Insurance has no authority or jurisdiction to handle an out-of-state injury claim filed in another state. Workforce Safety and Insurance has entered an agreement with an insurance carrier called Accident Fund Insurance Company of America under which WSI reinsures Accident Fund 100 percent on out-of-state exposures. However, because Accident Fund is barred by statute from conducting business in North Dakota, Accident Fund cannot respond to North Dakota claims.

### Trends and Initiatives

The committee received an overview of WSI trends and initiatives. The overview included WSI's performance metrics for the 2019 fiscal year which covered:

- Investment returns;
- Fund surplus;
- Premium dividends;
- Employer and injured employee satisfaction survey results;
- WSI employee turnover;
- Claims filed for every 100 covered employees;

- Average annual premium rate adjustment; and
- The available surplus ratio.

The committee was informed 5 to 10 percent of farmers provide workers' compensation coverage for their employees. Workforce Safety and Insurance had a robust agricultural initiative about 3 years ago which was coordinated with many of the agricultural associations within the state in an attempt to have more ranchers and farmers opt-in for workers' compensation coverage. The outreach attempt did not result in a significant increase in ranchers and farmers signing up for coverage. A majority of states, including North Dakota, do not require ranchers and farmers to have workers' compensation coverage for their employees. Workforce Safety and Insurance has continued with the agricultural initiative and WSI attends all major agricultural trade shows within the state with the objective of better educating ranchers and farmers on the benefits of workers' compensation coverage.

### **Time Computation**

In response to issues raised during the claim review process, the committee reviewed WSI's time computation policies and practices. The committee was informed Section 65-01-16 gives a party 30 days from the day the notice of decision was mailed by WSI to file a written request for reconsideration. Under Section 65-01-16, an employee has 30 days from the day the administrative order was mailed to file a request for assistance from the Decision Review Office, and a party has 30 days from the date of service of an administrative order or from the day the Decision Review Office mails its notice that the office's assistance is complete, to file a written request for rehearing. If a written appeal is not received within the 30-day limit, the decision is final.

### **Legislative Package**

The committee received a status report on the implementation of 2019 legislation relating to workers' compensation. The legislation addressed disability benefits for injured employees who had disability benefits discontinued preretirement and a reapplication for benefits postretirement; authorized WSI to establish alternative dispute resolution pilot programs, and a case processing, tracking, and reporting requirement for OAH; added a civil penalty for a contractor who uses the services of an uninsured employer under a cease and desist order; increased and created employer penalties for offsetting premiums against an employee's wages and for failing to report information; and outlined the penalties for an uninsured employer for failing to secure coverage and for being noncompliant.

## **RECOMMENDATION**

The committee recommends [House Bill No. 1040](#) to extend the 30-day time frame allotted for injured employees and employers to appeal or request reconsideration of a decision by WSI to 45 days and to remove the provision that the failure of an employer to file a response within 14 days from the day a response form was mailed to the employer constitutes the employer's admission the information in the claim form is correct.

## **REPORTS**

### **Quadrennial Performance Evaluation Update**

In accordance with Section 65-02-30, the committee received a status report on the implementation of the 2018 performance evaluation. A representative of WSI reported of the 14 recommendations made in the 2018 performance evaluation:

- WSI concurs with 11 recommendations.
- WSI partially concurs with 3 recommendations.
- As of August 2019, WSI finalized 9 recommendations and 5 recommendations remain works-in-progress.

The next performance evaluation will be conducted during the 2021-22 interim at which time the committee will be responsible for selecting up to four elements to be included in the performance evaluation.

### **Safety Grants Report**

Pursuant to Section 65-03-05, the committee received the biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03. The report provided an overview of the safety training and education program, ergonomic initiative and ergonomic grant programs, learning management system, and the federal Occupational Safety and Health Administration's Outreach Training Programs. The committee received data about each program, including continuing safety appropriation amount by biennium, beginning in 2005. The committee was informed the hazard elimination learning program grant and the workplace injury reduction challenge grant have been discontinued and are no longer funded.

## **Pilot Programs Report**

Pursuant to Sections 65-01-19 and 65-05.1-06.3, the committee received a report from WSI regarding current pilot programs and pilot programs completed within the previous 12 months, including a summary of findings and recommendations.

### **Alternative Dispute Resolution Pilot Program**

The committee was informed the alternative dispute resolution pilot program focuses on claims with conflicting medical information. The program is designed to identify and resolve medical issues much earlier in the adjudication process and avoid protracted litigation by having a neutral third-party medical professional review the conflicting medical information in the claim and provide an independent opinion. The neutral reviewer is agreed upon by the parties, participation in the process is voluntary for injured employees, and WSI pays the costs associated with the review performed by the neutral third party. Parties are bound by the opinion of the neutral reviewer.

### **Enhanced Injury Care Program Pilot Project**

The committee was informed the enhanced injury care program pilot project focuses on screening and early intervention to give treating providers a reliable tool to identify patients with certain psychosocial markers that may otherwise go unnoticed. The program is coordinated with Sanford Health Occupational Medicine - Bismarck and was designed to provide the ability to escalate the most severe cases for a brief psychological intervention with a specialist. The increased costs of screening and the rare psychological counseling conducted under this program are covered by WSI and the program has been broadened to include all Sanford Health Occupational Medicine clinics within the state.

## **Case Processing Standards and Policies Report**

Pursuant to Section 54-57-09, the committee received quarterly reports from OAH and WSI on statistical information regarding results under the case processing standards and policies adopted to produce a 6-month rolling average of time elapsed to 215 days or fewer between the date OAH receives a WSI file and the date of the administrative law judge's decision. The reports provided a statistical overview of data between 2010 to 2020, which provided the number of files received from WSI each year, the number of WSI-related hearings held each year, the average number of days between receipt of a WSI file and when a hearing is held, and the average number of days between receipt of a WSI file to when OAH closes the file.

The committee was informed the average number of days from OAH receiving a file to when a hearing is held was 248 days in 2017 and 258 days in 2018. In 2010, the average number of days was 141 days. To meet the 6-month rolling average of a 215-day limit, OAH contracted with two additional administrative law judges to help improve capacity and implemented new written criteria for performance, including a new timeline for issuing decisions. As a result of OAH's response and goal of meeting the 6-month rolling average of a 215-day limit, between November 1, 2019, and April 30, 2020, the average number of days was reduced to 176 and 179 days. Between November 1, 2019, and April 30, 2020, the average number of days from when an administrative hearing is held to when a decision is issued was reduced by 27 to 45 days.

The committee was informed the statistics regarding the decisions issued by OAH align with WSI's expectations and WSI was pleased the number of days for a decision to be issued by OAH was reduced by an average of 100 days.

# STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2019-20 INTERIM

The following table identifies the bills and resolutions considered by the Legislative Management for study during the 2019-20 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1015 § 9	<b>Department of Corrections and Rehabilitation review</b> Conduct a comprehensive study of the Department of Corrections and Rehabilitation. The study must include a review, with input from a consultant engaged by the Department of Corrections and Rehabilitation, of gender-responsive correctional and rehabilitation facility and service needs. The review must include: the preferable location of facilities; the service needs of individuals sentenced to the Department of Corrections and Rehabilitation; and the impact on families of individuals sentenced to the Department of Corrections and Rehabilitation. The study must include an assessment of facilities at the Missouri River Correctional Center, the James River Correctional Center, and the State Hospital, with input from a consultant engaged by the Department of Corrections and Rehabilitation. The assessment must: include the Department of Corrections and Rehabilitation master plan, staffing plan, comprehensive service delivery strategy, and cost estimates; be based on providing comprehensive services to those committed to the care, custody, and control of the Department of Corrections and Rehabilitation; include options for community-based and family-involved environments; and consider the opportunity for vocational and workforce development. A review of vocational opportunities, educational opportunities, workforce development, and medical and behavioral health treatment for those committed to the care, custody, and control of the Department of Corrections and Rehabilitation. (Department of Corrections and Rehabilitation Review Committee)
1018 § 14	<b>Unmanned aircraft system regulation</b> Study the future administration and regulation of the unmanned aircraft systems industry in North Dakota, including beyond visual line of sight unmanned aircraft system. The study must include a determination of the appropriate state agency or private entity to be assigned responsibility of regulating unmanned aircraft system programs, including licensing, registration, appropriate fees, and other responsibilities. The study may include a review of the audited financial statements associated with the beyond visual line of sight unmanned aircraft system of an entity receiving funding from the appropriation for the beyond visual line of sight unmanned aircraft system program in Section 9 of House Bill No. 1018. (Commerce Committee)
1021 § 6	<b>Private land access</b> Study access to public and private lands for hunting, trapping, fishing, and related issues, including trespass violations and penalties, and provide recommendations regarding a land access database with the capability of electronic posting. At the direction of the Legislative Management, before August 1, 2020, the Information Technology Department and Game and Fish Department shall establish a trial electronic posting and hunter access information system in up to three counties. The Information Technology Department and Game and Fish Department may contract with a third party to assist with the electronic posting and hunter access information system development and operation. (Natural Resources Committee)
1021 § 7	<b>Information technology unification</b> Study the Information Technology Department's transition to the run-grow-transform model and the information technology unification initiative. The study must include a review of changes in fees, services, operations, processes, and systems. (Information Technology Committee)
1021 § 10	<b>Emergency and interoperable public safety communications</b> Study consolidated emergency and interoperable public safety communications system governance and funding options. (Government Administration Committee)
1029 § 1	<b>Higher education funding formula</b> Review the higher education funding formula, including only the appropriateness of certain credit-hour weighting factors and the potential or need for additional weighting factors. (Higher Education Funding Formula Review Committee)
1050 § 6	<b>Recreational marijuana</b> Study the implications of the potential adoption of an initiated measure allowing the use of recreational marijuana. The study must consider the potential benefits and detriments of legalizing recreational marijuana. (Judiciary Committee)
1106 § 3	<b>Health insurance premium rates</b> Study ways the state may be able to positively affect the current trend of health insurance premium rates increasing, with a focus on the high-risk and subsidized markets. The study must be solution based to reduce costs and may include consideration of whether a strict managed care model might be effective. (Health Care Committee)
1220 § 1	<b>Central indexing system</b> In coordination with the Secretary of State, shall consider studying how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender. (Agriculture and Transportation Committee)

Bill or Resolution No.	Subject Matter (Committee)
1298 § 1	<b>Capitol grounds accessibility</b> Study accessibility of the State Capitol grounds as related to the Americans with Disabilities Act of 1990 [104 Stat. 327; 42 U.S.C. 12101 et seq.]. The study must include the effectiveness of the quantity and location of handicapped accessible parking spaces and the accessibility of entrances to the Capitol in consideration of security concerns. The study also must include interior considerations, including handicapped accessible restrooms with appropriate signage and seating areas on the ground floor of the Capitol for individuals to rest. (Government Administration Committee)
1374 § 3	<b>Prescription drug coverage</b> Study the feasibility and desirability of the Public Employees Retirement System entering a separate contract for prescription drug coverage under the uniform group insurance program. The Legislative Management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carve out for prescription drug coverage under the uniform group insurance program. (Employee Benefits Programs Committee)
1453 § 6	<b>Civil commitment laws and procedures</b> Study the state's civil commitment laws and procedures under Chapters 25-03.1 and 25-03.2 and the behavioral health and civil justice systems to determine whether: steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill. (Judiciary Committee)
1467 § 1	<b>Agricultural issues</b> Study agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under Title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process, including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under Title 60, and grain handling facility bonding requirements. (Agriculture and Transportation Committee)
1474 § 1	<b>Special assessment alternatives</b> Study options for replacing revenue generated by special assessments with revenue from an alternative local funding source. The study must include a review of the purposes for which special assessments are imposed, the revenue generated from the imposition of special assessments, local revenue sources that could be used as an alternative to imposing special assessments, and the manner in which fees for an alternative local revenue source would be calculated and imposed as compared to the manner in which special assessments are calculated and imposed. (Taxation Committee)
1485 § 1	<b>Personal data protection</b> Study protections, enforcement, and remedies regarding the disclosure of consumers' personal data. The study must include a review of privacy laws of other states and applicable federal law. (Commerce Committee)
2010 § 17	<b>State guaranteed issue provisions for health insurance</b> Study the feasibility and desirability of state guaranteed issue provisions for health insurance. The study must include consideration of protections for individuals with pre-existing conditions and consideration of whether to restructure the Comprehensive Health Association of North Dakota. (Health Care Committee)
2012 § 48	<b>Health care delivery</b> Study the delivery of health care in the state. The study must review the needs and future challenges of the North Dakota health care delivery system, including rural access to primary health care, the use of emergency medical services, strategies to better serve residents, and the role of health care services in the future development of the state. (Health Care Committee)
2013 § 20	<b>School transportation</b> Study school transportation, including district routes, expenditures, reimbursement, and possible efficiencies. (Education Funding Formula Review Committee)
2013 § 21	<b>Dual-credit, advanced placement, and distance education courses</b> Study dual-credit, advanced placement, and distance education courses. The study must include a review of early enrollment placement testing and the qualifications for dual-credit and advanced placement courses. The study also must include a review of the costs and amounts of funding necessary to provide all students access to dual-credit, advanced placement, and distance education courses, as well as the types of courses available and the delivery methods necessary to provide all students with access. (Education Policy Committee)
2015 § 32	<b>Legacy fund earnings</b> Study the potential uses of legacy fund earnings, including the use of earnings to provide tax relief, provide for reinvestment of legacy fund earnings, fund research and technological advancements, promote economic growth and diversification, and promote workforce development and career and technical education. The committee may consider public input on the use of legacy fund earnings and review the operation of other funds, such as Norway's sovereign wealth fund. (Legacy Fund Earnings Committee)



Bill or Resolution No.	Subject Matter (Committee)
2015 § 33	<b>Olmstead Commission</b> Study issues related to the Olmstead Commission. The study must include consideration of the implementation of the new Olmstead Commission structure and any emerging Olmstead issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities. (Human Services Committee)
2015 § 34	<b>Charitable gaming</b> Study the state's charitable gaming laws. The study must include: an evaluation of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters; an evaluation regarding the appropriate limitations, restrictions, and oversight if new games are added; an evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and a review of whether the laws regarding eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct and play of charitable gaming are fair, adequate, and appropriate. (Judiciary Committee)
2015 § 35	<b>Veterans' Home revenue potential</b> Study the feasibility and desirability of developing other allowable revenue-generating uses of the Veterans' Home facilities and grounds in addition to the purposes identified in Section 37-15-02. The study must include an analysis of potential revenue-generating activities for the Veterans' Home facilities and grounds, including a review of the effect on any federal requirements. (Government Administration Committee)
2019 § 14	<b>Lewis and Clark Interpretive Center</b> Study the feasibility and desirability of reducing Lewis and Clark Interpretive Center fees and consider alternatives to address the sustainability of the Parks and Recreation Department's operations of the Lewis and Clark Interpretive Center. (Government Finance Committee)
2019 § 15	<b>Property transfer to Parks and Recreation Department</b> Study the public access and use of real property located between the Missouri River and the Missouri River Correctional Center, owned by the State of North Dakota, under the control of the Department of Corrections and Rehabilitation, and the impact of transferring the property to the Parks and Recreation Department. (Government Finance Committee)
2061 § 2	<b>Electric vehicle infrastructure</b> Study current methods, using the electric vehicle infrastructure coalition, led by the Department of Transportation, to collaborate with the North Dakota utility industry, and North Dakota electric vehicle stakeholder groups, to design a jointly owned public and private network of electric vehicle infrastructure to support both commercial and noncommercial vehicles and make recommendations regarding electric vehicle charging infrastructure. The study must include the evaluation of the relative costs and benefits associated with various options for electric vehicle infrastructure support and estimate the future annual economic impact. (Agriculture and Transportation Committee)
2130 § 1	<b>State agency fees</b> Study, in coordination with the State Auditor, the provisions of Century Code relating to state agency fees. The study must include a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended; consideration of whether the amounts of fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services. (Government Finance Committee)
2148 § 1	<b>Ethics</b> Study the implementation and requirements of Article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the Legislative Assembly and the Ethics Commission, and potential issues under the Constitution of the United States and the Constitution of North Dakota. The members of the Ethics Commission must be invited to participate on the study committee as nonvoting members. The study must include a review of existing laws and laws enacted to implement Article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding Article XIV is necessary or desirable; and an effective means to educate public officials, lobbyists, and the public on the requirements of Article XIV and other laws regarding government ethics. (Judiciary Committee)
2176 § 2	<b>Road train pilot program</b> Study the feasibility and desirability of creating a road train pilot program. The study must include consultation with the Department of Transportation, Highway Patrol, Agriculture Commissioner, Industrial Commission, Department of Commerce, the Upper Great Plains Transportation Institute, and the Governor. The study must include an assessment of the federal regulations impacting road train operations, the economic impact of permitting road train operations in the state, and the costs associated with implementing a road train pilot program. The Legislative Council may contract for consulting services to assist the Legislative Management in conducting the study. (Agriculture and Transportation Committee)

**Bill or  
Resolution No.**

**Subject Matter (Committee)**

- 2217 § 1 **Teacher leadership incentive** Study the feasibility and desirability of creating a teacher incentive for leadership program. The study must include an evaluation of whether a program would improve student learning through improved instruction; reward effective teachers by providing increased leadership opportunities; attract new teachers to the state by offering competitive starting salaries and professional development; promote collaboration and new career pathways for teachers through mentoring, coaching, and project-based learning; and retain effective teachers through new career opportunities and advancement. The study also must include a review of the types of data to be tracked to determine the success of the program; the correlation and effectiveness of the program in relation to other teacher development programs; and how the program operates in relation to the statewide education strategic vision. (Education Policy Committee)
- 2241 § 1 **Sewage treatment systems** Study the regulation of sewage treatment system installation, maintenance, testing, and repair. The study must include consideration of a uniform set of rules; uniform occupational licensing requirements; testing and education requirements for occupations that install, maintain, test, and repair sewage treatment systems; the regulatory agency best able to regulate sewage treatment systems; options for maintaining local government control over sewage treatment system regulation; and issues relevant to these considerations. (Commerce Committee)
- 2265 § 23 **Education funding formula** Study the K-12 education funding formula, including the components, adjustments, and weighting factors of the formula. Members appointed to the committee must have a secure knowledge of the current K-12 funding formula. (Education Funding Formula Review Committee)
- 2312 § 4 **Tribal taxation issues** Study tribal taxation issues, including the tax collection agreements that exist between the tribes and the state, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, the procedure for withdrawal from an agreement and how to handle disputed funds; and methods for sourcing revenue generated from wells located inside or outside of the external boundaries of a reservation in this state when a horizontal lateral enters a spacing unit that is located both inside and outside of the external boundaries of a reservation in this state. The committee may study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. (Tribal Taxation Issues Committee)
- 2317 § 3 **Health facility construction and renovation** Study the State Department of Health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the State Department of Health. (Health Care Committee)
- 2355 § 1 **Alternative tax for liquid nicotine** Study the feasibility and desirability of applying an alternative or additional tax on liquid nicotine and electronic smoking devices. The study must include consideration of the current method of taxation applied to these products, the methods of taxation applied in other states, and the fiscal impact of applying an alternative or additional method of taxation. (Taxation Committee)
- 3004 **Blockchain technology** Study the potential benefit value of blockchain technology implementation and utilization in state government administration and affairs, including a comprehensive assessment of government areas in which blockchain technology can assist with agency affairs and administration, accounting and budgeting, transactions, creating necessary audit trails, authorizing a decision, authenticating authority, and establishing a system of record; and an analytical evaluation of implementing smart contracts to improve efficiencies in contract enforcement, the cost-effectiveness and increased security of utilizing a blockchain technology electronic voting system, and the exploration of other eGovernment services and applications, such as identity management, tax collection, land registry, distribution of benefits, and digital exchanges. (Information Technology Committee)
- 3011 **Education rewrite** Study those provisions of Century Code which relate to the provision of elementary and secondary education to recommend changes to any laws found to be irrelevant, duplicative, inconsistent, or unclear. (Education Policy Committee)
- 3015 **Offender release** Study best practices to reduce offender recidivism, increase educational opportunities, prepare incarcerated offenders to rejoin their communities, establish and implement a community transitional housing program, including independent host homes, and encourage communities to reintegrate previously incarcerated individuals into society; and may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center. (Department of Corrections and Rehabilitation Review Committee)
- 3031 **Juvenile justice** Study the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process. The Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center. (Judiciary Committee)

<b>Bill or Resolution No.</b>	<b>Subject Matter (Committee)</b>
3047	<b>Veterans programs</b> Study state and federal veterans' programs, the programs' eligibility requirements, and the efficiency of public or private entities responsible for the administration of state and federal veterans' programs to ensure all current and future North Dakota veterans receive the care, assistance, and benefits to which the veterans are entitled. The study must include consultation with the Administrative Committee on Veterans' Affairs, the Department of Veterans' Affairs, the Adjutant General, and any veterans organization seeking to provide input. (Government Administration Committee)
4004	<b>Student behavioral health</b> Study the impact of students who experience a behavioral health crisis or who engage in intense and aggressive behavior for communication purposes, both of which result in behaviors that make learning environments unsafe for other students, teachers, and other school personnel, and the need to implement a uniform reporting system. (Education Policy Committee)
4009	<b>Water resource boards</b> Study the feasibility and desirability of the water resource boards in each drainage basin forming a joint water resource board to plan and construct water conveyance projects based on basinwide needs. (Water Topics Overview Committee)
4013	<b>Rural area food concerns</b> Study the distribution and transportation of food in the state necessary to the lives of individuals in rural communities, and the roles of state entities in facilitating the movement of food to rural areas of the state. (Commerce Committee)
4014	<b>Behavioral health system</b> Study the implementation of the recommendations of the Human Services Research Institute's study of North Dakota's behavioral health system and that in conducting the study, the Legislative Management receive regular updates on each of the major recommendation areas from the report; identify the availability, access, and delivery of behavioral health services; seek input from stakeholders, including law enforcement, social and clinical service providers, medical providers, mental health advocacy organizations, emergency medical service providers, juvenile court personnel, educators, tribal governments, and state and local agencies; and consider options for improving access and the availability for behavioral health care. (Human Services Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
4.1-01-11	Receive report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities. (Agriculture and Transportation Committee)
4.1-01-21.1	Receive a biennial report from the Federal Environmental Law Impact Review Committee. (Agriculture and Transportation Committee)
4.1-36-04	Determine when the Agriculture Commissioner must submit a biennial report to a joint meeting of the House of Representatives and Senate Agriculture Committees on the status of the pesticide container disposal program. (Legislative Procedure and Arrangements Committee)
4.1-44-04	Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees. (Legislative Procedure and Arrangements Committee)
4.1-45-17	Receive annual audit report from the State Fair Association. (Legislative Audit and Fiscal Review Committee)
4.1-72-08	Receive electronic copy of audit report from the North Dakota Stockmen's Association at least once every 2 years. (Legislative Audit and Fiscal Review Committee)
6-09-15.1	Receive a report from the Office of Management and Budget regarding any loans obtained pursuant to Section 6-09-15.1. (Budget Section)
10-19.1-152	Receive annual audit report from a corporation receiving an ethanol or methanol production subsidy. (Legislative Audit and Fiscal Review Committee)
11-38-12	Receive annual report from the NDSU Extension Service on full-time equivalent position adjustments made. (Budget Section)
15-02-08.1	Receive an annual report from the Commissioner of University and School Lands on the investment performance of each fund under its control. (Budget Section)
15-03-04	Approve any purchase of commercial or residential property by the Board of University and School Lands as sole owner. (Budget Section)
15-10-12.1	Authorize the State Board of Higher Education to authorize building construction or campus improvements and building maintenance of more than \$700,000, if financed by donations. (Budget Section)
15-10-12.3	Receive biennial report from each institution under the control of the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used which details the source of all funds used in the project. (Budget Section)
15-10-38.1	Receive a report from the State Board of Higher Education by September 1 of each even-numbered year regarding the skilled workforce student loan repayment program. (Commerce Committee)
15-10-38.2	Receive a report from the State Board of Higher Education by September 1 of each even-numbered year regarding the skilled workforce scholarship program. (Commerce Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
15-10-44	Receive report from the State Board of Higher Education, on request, regarding higher education information technology planning, services, and major projects. (Information Technology Committee)
15-10-47	Receive reports from the Office of Management and Budget, when requested from the Budget Section, regarding the State Board of Higher Education's project variance semiannual reports regarding construction projects valued at more than \$250,000. (Budget Section)
15-10-59	Receive annual report from the State Board of Higher Education regarding the number of North Dakota academic scholarships and career and technical education scholarships provided and demographic information pertaining to the recipients. (Higher Education Committee)
15-10.4-02	Receive a copy of the campus free speech policy from the State Board of Higher Education. (Higher Education Committee)
15-11-40	Receive a report annually by the State Energy Research Center on all research activities and accomplishments. (Energy Development and Transmission Committee)
15-12.1-05	Receive annual report from the NDSU Main Research Center on full-time equivalent position adjustments made. (Budget Section)
15-12.1-17(8)	Receive report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures. (Agriculture and Transportation Committee)
15-12.1-17(10)	Receive status report from the State Board of Agricultural Research and Education. (Budget Section)
15-39.1-05.2	Receive notice from the Board of Trustees of the Teachers' Fund for Retirement of necessary or desirable changes in statutes relating to the administration of the Teachers' Fund for Retirement fund. (Employee Benefits Programs Committee)
15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate. (Employee Benefits Programs Committee)
15-39.1-35	Approve terminology adopted by the Board of Trustees of the Teachers' Fund for Retirement to comply with applicable federal statutes or rules. (Employee Benefits Programs Committee)
15-52-04	Receive biennial report and recommendations from the UND School of Medicine and Health Sciences Advisory Council regarding the strategic plan, programs, and facilities of the UND School of Medicine and Health Sciences. (Higher Education Committee)
15-70-05	Receive report from any tribally controlled community college receiving a grant under Chapter 15-70 detailing the expenditures of the grant funds, a copy of the institution's latest audit report, and documentation of the enrollment status of students. (Higher Education Committee)
15.1-02-04(9)	Receive a report from the Superintendent of Public Instruction on updates and the collaborative report on the statewide prekindergarten through grade twelve education strategic vision. (Education Policy Committee)
15.1-02-09	Receive annual report from the Superintendent of Public Instruction by the end of February on the financial condition of school districts. (Education Funding Formula Review Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports. (Education Funding Formula Review Committee)
15.1-02-17	Before the Superintendent of Public Instruction may submit proposed changes to the state accountability plan, the Superintendent must present changes to an interim committee designated by the Legislative Management. (Education Policy Committee)
15.1-06-08	Receive a report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of any rule governing the accreditation of schools. (Education Policy Committee)
15.1-06-08.1	Receive a report from the Superintendent of Public Instruction regarding waivers applications under Section 15.1-06-08.1. (Education Policy Committee)
15.1-06-08.2	Receive reports from the Superintendent of Public Instruction annually regarding the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules; and a review of evaluation date results. (Education Policy Committee)
15.1-13-36	Receive report from the Education Standards and Practices Board regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board. (Education Policy Committee)
15.1-21-10	Receive from the Superintendent of Public Instruction the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide. (Education Policy Committee)
15.1-32-26	Receive a report from the Superintendent of Public Instruction before July 1, 2021, with a recommendation whether to continue the dyslexia screening pilot program beyond the 2022-23 school year. (Education Policy Committee)
17-05-13	Receive written report from the North Dakota Transmission Authority each biennium. (Energy Development and Transmission Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
17-07-01	Receive biennial report from the Energy Policy Commission and its recommendations to the state energy policy. (Energy Development and Transmission Committee)
18-04-02	Receive biennial report from the State Fire Marshal summarizing the expenditures by certified fire departments and districts of funds received from the insurance tax distribution fund and reserve fund balances. (Budget Section)
18-11-15	Receive notice from firefighters relief associations of the association's intent to provide a substitution monthly service pension. (Employee Benefits Programs Committee)
18-13-02(6)	Receive report from the State Fire Marshal each interim on the State Fire Marshal's findings and any recommendation for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes. (Health Care Committee)
19-03.1-36.8(4)	Receive a report from the Attorney General by November 1 of each year summarizing activity of any civilly forfeited property. (Judiciary Committee)
19-24.1-39	Receive annual reports from the State Department of Health on the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers; and expenses incurred and revenues generated by the department. (Judiciary Committee)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by the Director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding \$10,000 by the Game and Fish Department. (Budget Section)
20.1-02-16.1	Authorize the Game and Fish Department to spend money in the game and fish fund if the balance would be reduced below \$15 million. (Budget Section)
21-10-11	Develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the State Investment Board. (Legacy and Budget Stabilization Fund Advisory Board)
21-10-11	Receive at least semiannual reports from the Legacy and Budget Stabilization Fund Advisory Board. (Budget Section)
23-01-40	Receive report from the Department of Human Services, State Department of Health, Indian Affairs Commission, and Public Employees Retirement System before June 1 of each even-numbered year on their collaboration to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes. (Health Care Committee)
23-43-04	Receive report by the State Department of Health before June 1 of each even-numbered year, regarding progress made toward the recommendations provided in Section 23-43-04 and any recommendations for future legislation. (Health Care Committee)
25-04-02.2	Authorize the Life Skills and Transition Center to provide services under contract with a governmental or nongovernmental person. (Budget Section)
25-04-17	Receive report on writeoff of patients' accounts at the Life Skills and Transition Center. (Legislative Audit and Fiscal Review Committee)
26.1-50-05	Receive annual audited financial statement and report from the North Dakota low-risk incentive fund. (Legislative Audit and Fiscal Review Committee)
27-20-61	Receive a report before July 1 of each even-numbered year from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding. (Tribal Taxation Issues Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules. (Administrative Rules Committee)
28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking. (Administrative Rules Committee)
28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking. (Administrative Rules Committee)
28-32-18	Determine whether an administrative rule is void. (Administrative Rules Committee)
28-32-42	Receive notice of appeal of an administrative agency's rulemaking action. (Administrative Rules Committee)
37-03-18	Receive annual report from the Adjutant General regarding the income and expenditures made from the North Dakota National Guard service member, veteran, family, and survivor support program. Approve any expenditures from the fund that exceed \$500,000 per biennium. (Budget Section)
37-17.1-27	Receive reports on the use of the state disaster relief fund to provide the required state share of funding for expenses associated with presidentially declared and governor-declared disasters in the state. (Budget Section)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
38-08-04.5	Receive report from the Industrial Commission each biennium on the balance of the abandoned oil and gas well plugging and site reclamation fund and expenditures from the fund. (Budget Section)
38-22-15	Receive, along with the Governor, a report from the Industrial Commission in December 2014 and every 4 years thereafter discussing whether the amount in the carbon dioxide storage facility trust fund and fees being paid into the fund are sufficient to satisfy the fund's objectives. (Energy Development and Transmission Committee)
38-23-08	Receive a report biennially from the High-Level Radioactive Waste Advisory Council (Energy Development and Transmission Committee)
39-03.1-29, 54-52-23, 54-52.1-08.2	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements. (Employee Benefits Programs Committee)
39-34-05	Receive report from the Department of Transportation regarding information collected from transportation network companies during each biennium. (Agriculture and Transportation Committee)
40-23-22.1	Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes. (Budget Section)
40-63-03(2)	Receive annual reports from the Department of Commerce's Division of Community Services on renaissance zone progress. (Taxation Committee)
40-63-03(10)	Receive annual report from the Department of Commerce compiling reports from cities that have a renaissance zone included in a tax increment financing district. (Taxation Committee)
40-63-07(9)	Receive annual report from the Department of Commerce's Division of Community Services on conclusions of annual audits of renaissance fund organizations. (Budget Section)
45-10.2-115	Receive annual audit report from a limited partnership receiving an ethanol alcohol or methanol production subsidy. (Legislative Audit and Fiscal Review Committee)
46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws. (Legislative Procedure and Arrangements Committee)
47-30.1-24.1	Receive report from the Commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency. (Budget Section)
47-30.1-24.1	Approve state agency relinquishment of unclaimed property belonging to that agency. (Budget Section)
48-01.2-25	Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly, but if within 6 months before or 3 months after a regular session the authorization is limited to changes in project scope and related expenditures resulting from an unforeseen emergency event. (Budget Section)
50-06-05.1	Approve termination of federal food stamp or energy assistance program. (Budget Section)
50-06-31	Receive report from the Department of Human Services before March 1 of each even-numbered year on services provided by the Department of Corrections and Rehabilitation relating to individuals at the State Hospital who have been committed to the care and custody of the Executive Director of the Department of Human Services. (Judiciary Committee)
50-06-32	Receive autism spectrum disorder plan from the Autism Spectrum Disorder Task Force before July 1, 2010, and an annual status report thereafter. (Human Services Committee)
50-06-32.1	Receive report from the Department of Human Services regarding the autism spectrum disorder program pilot project. (Human Services Committee)
50-06-37	Receive a report from the Department of Human Services and the steering committee for developmental disabilities system reimbursement project on development activities and status information for the project. (Human Services Committee)
50-06-43.2	Receive a report from the Commission on Juvenile Justice with the commission's findings and recommendations which may include a legislative strategy to implement the recommendations. (Judiciary Committee)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts. (Legislative Audit and Fiscal Review Committee)
50-24.1-37	Receive a report from the Department of Human Services before August 1 of each even-numbered year, regarding provider reimbursement rates under the medical assistance expansion program. (Human Services Committee)
50-24.1-40(4)	Receive a biennial report before August of each even-numbered year from the Department of Human Services on the tribal health care coordination fund and tribal government use of money distributed from the fund. (Human Services Committee)
50-29-02	Receive annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan. (Human Services Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
52-02-17	Receive report from Job Service North Dakota before March 1 of each year on the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next 3 years. (Budget Section)
52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota. (Legislative Audit and Fiscal Review Committee)
53-06.2-04	Receive biennial report from the Racing Commission and recommendations for legislation which address the issue of the liability of charitable organizations that receive and disburse money handled through account wagering. (Judiciary Committee)
53-12.1-03	Receive report, as requested, from the Director of the North Dakota Lottery regarding the operation of the lottery. (Judiciary Committee)
54-03-20	Establish guidelines on maximum reimbursement of legislators sharing lodging during a legislative session. (Legislative Procedure and Arrangements Committee)
54-03-26	Determine the fee payable by legislators for use of personal computers. (Legislative Procedure and Arrangements Committee)
54-03-26	Establish policy under which a legislator may purchase the computer used by that legislator upon replacement of the computer by the Legislative Council. (Legislative Procedure and Arrangements Committee)
54-03-28	Contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment. (Health Care Committee)
54-03-32	Review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. (Judiciary Committee)
54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel. (Legislative Procedure and Arrangements Committee)
54-06-31	Receive periodic reports from Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. (Employee Benefits Programs Committee)
54-06-32	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing service awards to employees in the classified service. (Administrative Rules Committee)
54-06-32	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing service awards to employees in the classified service. (Employee Benefits Programs Committee)
54-06-33	Approve, with the State Personnel Board, rules adopted by Human Resource Management Services authorizing state agencies to provide employer-paid costs of training or educational courses to employees in the classified service. (Administrative Rules Committee)
54-06-33	Receive biennial report from the Office of Management and Budget summarizing reports of state agencies providing employer-paid costs of training or educational courses to employees in the classified service. (Employee Benefits Programs Committee)
54-06-34	Receive biennial report from the Office of Management and Budget summarizing reports of executive branch state agencies paying employee membership dues for professional organizations and membership dues for service clubs when required to do business or if the membership is primarily for the benefit of the state. (Employee Benefits Programs Committee)
54-06-37	Approve purchase or lease of an airworthy aircraft not otherwise replacing an aircraft with only insurance proceeds by a state agency or entity of state government, other than the Adjutant General or the University of North Dakota School of Aviation, if the Legislative Assembly is not in session. (Budget Section)
54-07-12	Receive a report from the Governor regarding the donations related to the Theodore Roosevelt Presidential Library and Museum. (Budget Section)
54-07-12	Receive a report within 30 days of applying for the loan outlined in Section 8 of Senate Bill No. 2001 which includes all completed loan application documents. (Budget Section)
54-10-01	Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency. (Legislative Audit and Fiscal Review Committee)
54-10-01	Determine frequency of audits of state agencies. (Legislative Audit and Fiscal Review Committee)
54-10-01	Preapprove the State Auditor to contract for work required by the federal government. (Legislative Audit and Fiscal Review Committee)
54-10-01	Preapprove performance audits on state agencies determined by the State Auditor. (Legislative Audit and Fiscal Review Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
54-10-01	Determine necessary performance audits by the State Auditor. (Legislative Audit and Fiscal Review Committee)
54-10-13	Determine when the State Auditor is to perform audits of political subdivisions. (Legislative Audit and Fiscal Review Committee)
54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision. (Legislative Audit and Fiscal Review Committee)
54-10-28, 54-35-15.4	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews. (Information Technology Committee)
54-11-01	Receive report from the State Treasurer, within 90 days of the beginning of each fiscal year, regarding all warrants and checks outstanding for more than 90 days and less than 3 years. (Budget Section)
54-14-03.1	Receive reports on fiscal irregularities. (Budget Section)
54-16-04(1)	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly. (Budget Section)
54-16-04(2)	Approve transfers exceeding \$50,000 from one fund or line item to another unless necessary to comply with a court order or to avoid imminent threat to safety or imminent financial loss to the state. (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's acceptance of federal funds in excess of \$50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of a state officer's expenditure of federal funds in excess of \$50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.1(4)	Approve, with the Emergency Commission, acceptance of any federal funds made available to the state which are not for a specific purpose or program and which are not required to be spent before the next regular legislative session for deposit in a special fund until the Legislative Assembly appropriates the funds. (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's acceptance of funds in excess of \$50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of a state officer's expenditure of funds in excess of \$50,000 if the acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-16-04.3	Approve, on the advice of the Office of Management and Budget and the recommendation of the Emergency Commission, a state officer to employ full-time equivalent positions in addition to those authorized by the Legislative Assembly. (Budget Section)
54-16-09	Approve Emergency Commission authorization of transfer of spending authority from the state contingencies appropriation in excess of \$50,000 if the transfer is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. (Budget Section)
54-17-40	Receive report from the Housing Finance Agency at least once per biennium regarding the activities of the housing incentive fund. (Budget Section)
54-17-42	Receive report from the Industrial Commission if any order, regulation, or policy of the Industrial Commission has an estimated fiscal effect on the state in excess of \$20 million in a biennium. (Budget Section)
54-17.7-13	Receive biennial report from the North Dakota Pipeline Authority on its activities. (Energy Development and Transmission Committee)
54-17.8-07	Receive biennial report from the North Dakota Outdoor Heritage Advisory Board. (Budget Section)
54-23.3-11	Receive report from the Department of Corrections and Rehabilitation annually on the department's prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing. (Budget Section)
54-27-22	Approve use of the preliminary planning revolving fund. (Budget Section)
54-27-23	Approve use of cashflow financing. (Budget Section)
54-27-27	Receive report from the Office of Management and Budget at each meeting of the Budget Section regarding the reports received from state agencies, other than entities under the control of the State Board of Higher Education, that have applied for federal grants estimated to be \$25,000 or more. (Budget Section)



<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
54-27-27.1	Receive a report by the Office of Management and Budget by October 15 of each even-numbered year, regarding the reports received by the Office of Management and Budget from each executive branch state agency, excluding entities under the control of the State Board of Higher Education, receiving federal funds, a plan to operate the state agency when federal funds are reduced by 5 percent or more of the total federal funds the state agency receives. (Government Administration Committee)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the general fund to offset projected decrease in general fund revenues. (Budget Section)
54-35-02	Review uniform laws recommended by the Commission on Uniform State Laws. (Judiciary Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall. (Legislative Procedure and Arrangements Committee)
54-35-02	Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents. (Legislative Procedure and Arrangements Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor. (Legislative Audit and Fiscal Review Committee)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans. (Employee Benefits Programs Committee)
54-35-02.6	Study and review administrative rules and related statutes. (Administrative Rules Committee)
54-35-02.7	Legislative overview of water-related topics and related matters and any necessary discussions with adjacent states on water-related topics. (Water Topics Overview Committee)
54-35-02.7	Legislative overview of the Garrison Diversion Project. (Water Topics Overview Committee)
54-35-02.7	Report on the Water Topics Overview Committee's project prioritization process, provide updates on allocated program expenditures, and report on the fund balances of projects, grants, and contracts. (Water Topics Overview Committee)
54-35-02.8	As the Legislative Ethics Committee, consider or prepare a legislative code of ethics. (Legislative Procedure and Arrangements Committee)
54-35-02.9	Consider specific actions, projects, and transfers. (Budget Section)
54-35-11	Make arrangements for legislative session. (Legislative Procedure and Arrangements Committee)
54-35-15.2	Receive a project startup report and a project closeout report from the affected legislative or judicial branch agency regarding any information technology project with a total cost of \$500,000 or more. (Information Technology Committee)
54-35-15.2	Receive a report from the Chief Information Officer regarding the recommendations of the State Information Technology Advisory Committee relating to the prioritization of proposed major information technology projects and other information technology issues. (Information Technology Committee)
54-35-15.2	Receive and review information received from the State Board of Higher Education relating to higher education information technology projects with a total cost of \$500,000 or more and receive and review information from the Information Technology Department regarding any information technology project of an executive branch agency with a total cost of between \$100,000 and \$500,000. (Information Technology Committee)
54-35-15.2	Receive information from the State Board of Higher Education regarding higher education information technology planning, services, and major projects. (Information Technology Committee)
54-35-15.2	Review the activities of the Information Technology Department, statewide information technology standards, the statewide information technology plan, and major information technology projects; review cost-benefit analyses of major projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition. (Information Technology Committee)
54-35-15.3	Review any information technology project or information technology plan. If the committee determines that the project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure of moneys appropriated for a project or plan. (Information Technology Committee)
54-35-18	Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. (Energy Development and Transmission Committee)
54-35-22	Review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. (Workers' Compensation Review Committee)
54-35-26	Study economic development tax incentives as provided in Section 54-35-26. (Taxation Committee)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority. (Government Administration Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
54-44-04(23)	Receive report from the Director of the Office of Management and Budget on the status of tobacco settlement funds and related information. (Budget Section)
54-44-16	Receive report from the Office of Management and Budget regarding any purchase of oil put options by the State Investment Board to offset reduced general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. (Budget Section)
54-44.1-07	Prescribe form of budget information prepared by the Director of the Budget. (Budget Section)
54-44.1-12.1	Object to any allotment by the Director of the Budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent. (Budget Section)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action. (Budget Section)
54-44.4-02.2	Receive report from the Office of Management and Budget in December of even-numbered years regarding commodities and services exempted from state procurement requirements. (Budget Section)
54-57-09	Receive a report from the Office of Administrative Hearings and Workforce Safety and Insurance on statistical information regarding results under the case processing standards and policies. (Workers' Compensation Review Committee)
54-59-02.1	Receive from the Chief Information Officer recommendations of the Information Technology Department's advisory committee regarding major software projects for consideration and the drafting of appropriate legislation to implement the recommendations. (Information Technology Committee)
54-59-02.2	Receive a report from the Chief Information Officer, before June 1 of each even-numbered year, regarding the implementation of distributed ledger technologies. (Information Technology Committee)
54-59-05(4)	Approve execution by the Information Technology Department of proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of \$1 million. (Budget Section)
54-59-12	Receive report from the Chief Information Officer regarding the coordination of services with political subdivisions and from the Chief Information Officer and the Chief Information Officer of the North Dakota University System regarding coordination of information technology between the Information Technology Department and higher education. (Information Technology Committee)
54-59-19	Receive annual report from the Information Technology Department. (Information Technology Committee)
54-59-36	Receive report from the Statewide Longitudinal Data System Committee regarding recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance. (Information Technology Committee)
54-60-03	Determine the standing committees that will receive the report from the Commissioner of Commerce on the Department of Commerce's goals and objectives, its long-term goals and objectives, and on commerce benchmarks. (Legislative Procedure and Arrangements Committee)
54-60-28	Receive report from the Department of Commerce semiannually regarding the status of the program to establish and administer an unmanned aircraft systems test site in cooperation with UND, the Aeronautics Commission, Adjutant General, and private parties appointed by the Governor. (Commerce Committee)
54-60-29.1	Receive semiannual reports from the Department of Commerce regarding the development of the beyond visual line of sight unmanned aircraft system program and the total amount deposited by the State Treasurer in the general fund. (Commerce Committee)
54-60.1-07	Receive the compilation and summary of state grantor reports filed annually by the Department of Commerce and the reports of state agencies that award business incentives for the previous calendar year. (Taxation Committee)
54-61-03	Receive annual report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices. (Judiciary Committee)
57-20-04	Receive a report from the Tax Commissioner, by April 1 of each year, of a statewide report of property tax increase. (Taxation Committee)
57-40.6-12	Receive report from the Emergency Services Communications Coordinating Committee by November 1 of each even-numbered year regarding the use of the assessed communications services fee revenue; and receive recommendation regarding changes to the operating standards for emergency services communications, including training or certification standards for dispatchers. (Information Technology Committee)
57-51-15(6)	Receive a report from the Tax Commissioner within 45 days after the end of each calendar year from compiled reports from counties receiving allocations of oil and gas gross production tax revenues describing funds received and expended. (Taxation Committee)
57-51-15(7)	Receive a report from the Tax Commissioner within 45 days after the end of each fiscal year from compiled reports from school districts receiving allocations of oil and gas gross production tax revenues describing funds received and expended. (Taxation Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
57-51.2-02	Receive report from tribal governing bodies annually regarding investment of oil and gas tax receipts in essential infrastructure and fees, expenses, and charges the tribe imposes on the oil industry. (Budget Section)
57-60-02.1	Receive annual report from the operator of a coal conversion facility that receives a carbon dioxide capture credit for certain coal conversion facilities regarding the facility's carbon dioxide capture project. (Energy Development and Transmission Committee)
65-01-18	Receive an annual report from Workforce Safety and Insurance on the status, including a summary of findings and recommendations, of any current pilot programs and pilot programs completed within the previous 12 months. (Workers' Compensation Review Committee)
65-02-30	Receive report from the Director of Workforce Safety and Insurance, the Chairman of the Workforce Safety and Insurance Board of Directors, and the audit firm regarding the quadrennial performance evaluation of Workforce Safety and Insurance and select no more than four elements for inclusion in the performance evaluation. (Workers' Compensation Review Committee)
65-03-05	Receive biennial report from Workforce Safety and Insurance regarding compiled data relating to safety grants issued under Chapter 65-03. (Workers' Compensation Review Committee)
65-05.1-06.3	Receive annual report from Workforce Safety and Insurance which includes reports on pilot programs to assess alternative methods of providing rehabilitation services. (Workers' Compensation Review Committee)
65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workforce safety and insurance. (Budget Section)

<b>2009 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 29 § 5	Administer remaining funds for legislative wing equipment and improvements. (Legislative Procedure and Arrangements Committee)

<b>2011 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 1 § 6	Administer remaining funds for legislative committee room renovations and improvements. (Legislative Procedure and Arrangements Committee)

<b>2013 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 471 § 12	Receive report from a representative of a hub city annually on the use of funding received from allocations from the oil and gas gross production tax under Section 57-51-15. (Budget Section)

<b>2017 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 19 § 10	Approve a payment from the State Water Commission to the Bank of North Dakota for payment of a Western Area Water Supply Authority defaulted consolidation loan payment. (Budget Section)

<b>2019 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 2 § 18	Receive a report from the judicial branch regarding its study of the need for 1 full-time equivalent court reporter position for each district court judgeship. (Budget Section)
Chapter 3 § 23	Receive a report from the State Board of Higher Education regarding any transfer of funds from the operations to the capital assets and capital building fund line items. (Higher Education Committee)
Chapter 3 § 31	Receive a report from the University System during the 2019-20 interim on the use of funding in each institutions' capital building fund line item, the source of matching funds, and each institution's 5-year plan for capital construction spending. (Higher Education Committee)
Chapter 3 § 33	Approve any tuition rate increases over 4 percent by the State Board of Higher Education for the 2019-20 or 2020-21 academic years. (Budget Section)
Chapter 4 § 7	Receive a report from the State Department of Health before July 1, 2020, regarding the implementation of electronic access to vital records. (Information Technology Committee)
Chapter 12 § 10	Receive a report from the Department of Transportation regarding its study of public transportation services within the state. (Agriculture and Transportation Committee)
Chapter 13 § 10	Receive a report from the Commissioner of University and School Lands regarding the status of the information technology project. (Information Technology Committee)
Chapter 14 § 7	Approve Industrial Commission expenditure for 2 full-time equivalent positions if the total number of oil wells capable of production and injection exceeds 20,800. (Budget Section)

<b>2019 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 14 § 19	Receive reports on the status of the Industrial Commission's study on recycling produced water in oil and gas operations from the study contractor. (Energy Development and Transmission Committee)
Chapter 14 § 25	Receive a report from the Energy and Environmental Research Center on the results and recommendations of the underground gas storage pilot project. (Energy Development and Transmission Committee)
Chapter 20 § 8	Receive an annual report from the State Board of Higher Education regarding any adjustments or increases in full-time equivalent positions. (Budget Section)
Chapter 21 § 9	Receive a report by September 1, 2020, from the Information Technology Department regarding its review of service rates charged to state agencies. (Information Technology Committee)
Chapter 24 § 32	Receive a report before June 30, 2020, from the Department of Environmental Quality regarding the department's plan for boiler inspection fees to meet program expenses. (Government Finance Committee)
Chapter 26 § 3	Receive a report from the Governor's office regarding the source, amount, and purpose of any additional income from federal or other funds received. (Budget Section)
Chapter 28 § 10	Receive a report from the Attorney General during the 2019-20 interim regarding the status and results of the human trafficking victims grant program. (Judiciary Committee)
Chapter 35 § 15	Receive a report from the Insurance Department regarding a detailed analysis of health care in the state. (Health Care Committee)
Chapter 37 § 10	Receive a report from the Department of Human Services after June 30, 2020, regarding any transfers in excess of \$50,000 made during the 2019-21 biennium between line items within subdivisions 1, 2, and 3 of Section 1 of Senate Bill No. 2012 (2019). (Budget Section)
Chapter 37 § 11	Receive a report from the Department of Human Services after June 30, 2020, regarding any transfers in excess of \$50,000 made during the 2019-21 biennium between line items within subdivisions 1, 2, and 3 of Section 1 to subdivision 4 of Section 1 of Senate Bill No. 2012 (2019). (Budget Section)
Chapter 37 § 18	Receive a report prior to July 1, 2020, from the Department of Human Services on the acute psychiatric and residential care statewide needs plan. (Human Services Committee)
Chapter 37 § 19	Receive a report prior to October 1, 2020, from the Department of Human Services on the plan to implement the revised payment methodology for nursing facility services. (Human Services Committee)
Chapter 37 § 22	Receive a report during the 2019-20 interim from the Department of Human Services and permanent housing program grant recipients, regarding the services provided by the programs, the nonidentifiable demographics of the individuals receiving services, and the other funding or reimbursement being used to support the programs. (Human Services Committee)
Chapter 37 § 47	Receive a report before August 1, 2020, from the Department of Human Services regarding the implementation of the Human Services Research Institute report recommendations. (Human Services Committee)
Chapter 45 § 4	Approve State Water Commission expenditure of funds that become available in the resources trust fund and the water development trust fund in excess of 2019-21 biennium appropriations. (Budget Section)
Chapter 45 § 12	Receive regular progress reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project. (Water Topics Overview Committee)
Chapter 45 § 14	Approve the Garrison Diversion Conservancy District to change funding between designations for the Red River Valley Water Supply Project. (Budget Section)
Chapter 45 § 14	Receive and approve certification from the State Water Commission and the State Engineer that all items listed in subsection 1 of Section 14 of Senate Bill No. 2020 (2019) have been accomplished. (Budget Section)
Chapter 45 § 14	Receive quarterly progress reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project. (Water Topics Overview Committee)
Chapter 45 § 15	Receive a report from the State Water Commission no later than August 1, 2020, on the results of the basinwide water plan funding pilot project. (Water Topics Overview Committee)
Chapter 144 § 1	Receive an annual report from the Kindergarten Through Grade Twelve Education Coordination Council on the activities of the council. (Education Policy Committee)
Chapter 149 § 25	Receive a report from the Education Standards and Practices Board during the 2019-20 and 2021-22 interims regarding the number of teacher permits issued under an alternative teacher certification program, the effectiveness of the program, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. The report must include a recommendation regarding continuation of the program. (Education Policy Committee)
Chapter 160 § 2	Receive a report from the Education Standards and Practices Board during the 2019-20 and 2021-22 interims regarding the status of the alternative teacher certification program. (Education Policy Committee)

<b>2019 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 163 § 2	Receive a report from the Education Standards and Practices Board during the 2019-20 and 2021-22 interims regarding the status of the alternative teacher certification program. (Education Policy Committee)
Chapter 206 § 4	Receive a report before July 1, 2020, from the State Department of Health regarding the implementation of innovation waivers for health facilities construction or renovation projects. (Health Care Committee)
Chapter 218 § 7	Receive a report from the Department of Environmental Quality on or before October 1, 2020, on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the 1 <sup>st</sup> full year of the 2019-21 biennium. (Agriculture and Transportation Committee)
Chapter 228 § 5	Receive a report from the Department of Human Services on the system of services for individuals with an intellectual or developmental disability. (Human Services Committee)
Chapter 397 § 3	Receive a report from the Department of Human Services on the ongoing work of the department to improve community provider capacity, together with any barriers encountered and a report regarding the system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs. (Human Services Committee)
Chapter 398 § 1	Receive an annual report from the Task Force on the Prevention of Sexual Abuse of Children before July 1 of each even-numbered year with any findings and recommendations. Before July 1, 2024, the task force shall submit a final report. (Judiciary Committee)
Chapter 417 § 2	Receive a report before July 1, 2020, from the State Department of Health on the status and progress of implementing a public awareness campaign to provide information, public service announcements, and educational materials regarding abandoned infants and approved locations for abandoned infants. (Health Care Committee)
Chapter 452 § 1	Receive reports from the Department of Transportation, as requested, on the road train pilot program. (Agriculture and Transportation Committee)
Chapter 467 § 1	Receive a report during the 2019-20 interim from the Information Technology Department regarding internal local area network services provided under Senate Bill No. 2318 (2019). (Information Technology Committee)
Chapter 538	Hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress. (Budget Section)

## **LEGISLATIVE MANAGEMENT ASSIGNMENTS**

The following table identifies additional assignments by the Legislative Management or the Chairman of the Legislative Management to interim committees.

<b>Responsibility</b>	<b>Interim Committee</b>
Receive a report from the Higher Education Funding Formula Review Committee	Higher Education Committee
Study higher education institutions under the control of the State Board of Higher Education. The study must include: higher education trends, including enrollment, space needs, and distance education, and their impact on higher education institutions and the state; higher education research relating to agriculture, energy, and other sectors, including its economic impact, available funding, and the impact of institution and systemwide administrative structures on research; higher education facilities, including campus and legislative funding expectations and the role of the new three tier capital building fund program; and the role of higher education in meeting the state's workforce needs, including TrainND, dual missions, and interstate cooperation	Higher Education Committee
Receive periodic reports from the Department of Human Services on the status of the department's administration of county social service programs, including the establishment of human service zones, human service zone budgets, and the indirect cost allocation plan; program changes and any "family first" legislation initiatives; formula payments, and any county employees transferred to the department	Human Services Committee
Study state revenues and state revenue forecasts, including monitoring state revenues and state economic activity reviewing forecasting data and models, and reviewing and analyzing executive revenue forecasts and alternative revenue forecasts	Legislative Revenue Advisory Committee
A review of whether the state's charitable gaming laws regarding taxation are fair, adequate, and appropriate	Taxation Committee

## STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Management for study during the 2019-20 interim under authority of Section 54-35-02. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Management.

Bill or Resolution No.	Subject Matter
1003 § 34	<b>University competitive research</b> Consider studying University System competitive research programs, including the established program to stimulate competitive research.
1018 § 15	<b>Motion picture incentives</b> Consider studying motion picture incentives. The study must include a review of upper Midwest and neighboring states' statutes on motion picture incentives to assess their successes and challenges; an analysis of the economic impact that would benefit communities through food, lodging, supplies, and transportation; an assessment of existing industry infrastructure in the state and opportunities for growth; and an identification of unique geographic, seasonal, regulatory, and topographical assets the state has for the motion picture industry.
1246 § 2	<b>Gratis hunting licenses</b> Consider studying gratis licenses to hunt deer, antelope, elk, and moose. The study must include consideration of the minimum acreage requirements for a gratis license, restrictions on where individuals with gratis licenses to hunt moose may hunt, how gratis licenses to hunt deer are allocated in units to ensure an adequate supply remains available for individuals with other licenses to hunt deer, and whether eligibility for a gratis license to hunt moose should be annual or once in a lifetime.
1265 § 1	<b>State parks</b> Consider studying the purpose, value, and benefits of each state park. The study must include a review of each state park's usage, annual attendance figures, overhead, and the cost to operate and maintain each state park.
1367 § 1	<b>Railroad crossings</b> Consider studying railroad crossings to determine whether adequate safety measures exist to prevent collisions between trains and motor vehicles. The study must include: consultation with the Department of Transportation, Highway Patrol, and associations and organizations representing counties, cities, townships, and the agricultural community; the design and safety of railroad crossings and the feasibility of implementing design changes to increase safety and to reduce the likelihood of obstructions at the crossings, and consideration of the adequacy of traffic and pedestrian warning signals; the availability of federal funding for railroad crossing improvement projects; the feasibility of equipping trains with technology to increase safety; and data on railroad crossing accidents and incidents that have occurred within the state on an annual basis over the past 5 years.
1401 § 1	<b>Interim committee remote access</b> Consider studying the use of technology to enable remote attendance at interim legislative committee meetings as a cost-saving measure. The study must include consideration of technologies, including telephone conferences, interactive video networks, and other options for video interactions.
1435 § 5	<b>Public safety communications</b> Consider studying consolidated emergency and interoperable public safety communications system governance and funding options.
1470 § 4	<b>State employee leave</b> Consider studying the leave policies for state employees. The study shall include the efficacy and desirability of transitioning annual leave and sick leave into a combined paid time off system.
1487 § 1	<b>Homestead tax credit</b> Consider studying the homestead tax credit, a credit that reduces the property taxes of individuals who are 65 years of age or older or individuals who are permanently and totally disabled and whose income is \$42,000 or less per year. The study must include consideration of whether: the income levels and asset thresholds specified in the credit should be modified or indexed; the credit impacts property valuations; the qualifying age of 65 years of age or older is appropriate considering changing demographics; and the current criteria for qualifying for the credit is effectively targeting those most in need. The study also must include a review of the number of individuals who have claimed the credit in the past, an estimate of the number of individuals who might claim the credit in future years, and the estimated fiscal impact of making any changes to the credit.
1519 § 2	<b>Medical marijuana medical conditions</b> Consider studying the list of debilitating medical conditions under the medical marijuana program to determine the appropriateness of the list, including whether conditions should be added to or removed from the list.
2010 § 18	<b>Volunteer firefighter pension</b> Consider studying the feasibility and desirability of establishing a pension for volunteer firefighters. The study must include a review of firefighter needs in the state and benefits provided to volunteer firefighters in other states.
2042 § 1	<b>County standard procedures and classification</b> Consider studying the feasibility and desirability of developing standard procedures and classification of accounts to provide a means of accumulating financial information that is uniform for all counties, regardless of the county's size or various approaches to budgeting and accounting which may be in use, with the objective of achieving uniformity of financial information to guide preparation of financial reports required by law.

Bill or Resolution No.	Subject Matter
2359 § 1	<b>Electrician regulation</b> Consider studying the regulation of and scope of practice of electricians. The study must include consideration of scope of practice and regulation as they relate to power limited systems and must include receipt of information from stakeholders, including trade groups.
3027	<b>Uniform group health insurance expansion</b> Consider studying the expansion of the Public Employees Retirement System's uniform group insurance health benefits for long-term state employees who separate from employment due to reduction in force or retirement.
3044	<b>Asset-building for low-income workers</b> Consider studying, in consultation with the Department of Commerce, Department of Human Services, and the private sector, the desirability and feasibility of developing and expanding asset-building opportunities, including a review of state and federal policies associated with government assistance which impede or improve low-income workers' ability to earn more income.
3048	<b>Wind reclamation fund</b> Consider studying the feasibility and desirability of establishing a wind reclamation fund and whether the statutorily required minimum wind turbine setback distances provide adequate protections to nonparticipating landowners and their property.
3051	<b>Roughrider Industries expansion</b> Consider studying the feasibility, desirability, and benefits of expanding the goods and services produced by Roughrider Industries into additional noncompetitive markets to provide inmates with the training and skills to successfully reintegrate the inmates into society; and must include consultation with the Department of Corrections and Rehabilitation and any private North Dakota business seeking to provide input.
3052	<b>Motor vehicle laws</b> Consider studying the traffic fines and penalties imposed by state and local governments and conduct a complete analysis of Title 39. The study must include a comprehensive assessment addressing any inconsistencies, conflicting chapters or sections, or lack of clarity within Title 39 and a review of North Dakota's traffic fines, fees, and penalty statutes and compare them with the fines, fees, and penalties of other states; and include an analytical evaluation of methods to improve traffic safety, decrease motor vehicle crashes, fatalities, and injuries, and discourage impaired driving, speeding, distracted driving, and lack of seatbelt use in North Dakota.
3054	<b>Steps to eliminate HIV and AIDS</b> Consider studying the necessary steps and resources, including funding, to eliminate HIV and AIDS in North Dakota.
3056	<b>Missing and murdered indigenous people</b> Consider studying the issues and data reporting challenges related to missing and murdered indigenous people and human trafficking cases.
4010	<b>Mineral royalty payments</b> Consider studying postproduction deductions from royalty payments. The study must include consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, and the methods used to report any deductions or incentives on mineral royalty statements; and must include input from representatives from the oil and gas industry, representatives from an organization representing royalty owners, the Department of Mineral Resources, the Department of Trust Lands, the Attorney General's office, and other state agencies.

# 2021 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

## HOUSE

**[House Bill No. 1026](#) - Changes to North Dakota Century Code Title 60.** This bill relates to required financial criteria and conditions necessary to be licensed as a grain buyer or grain warehouse in the state, and the joining of grain brokers to insolvency proceedings; adds definitions of deferred-payment contracts, grain broker, and grain processors, removes the definition of facility-based grain buyer, adds licensing and bonding requirements for grain buyers, returns all warehouse and grain buyer licenses to annual licenses, changes license fee amounts, alters licensing criteria, raises minimum bonding amounts for grain buyers and warehouses, reduces the number of days to convert a scale ticket, removes trust fund and credit-sale contract indemnity fund protection for producers who fail to convert a scale ticket, and allows e-signatures to satisfy credit-sale contract signing requirements; and repeals several sections of code addressing facility-based grain buyers. (Agriculture and Transportation Committee)

**[House Bill No. 1027](#) - School District Transportation Aid Payments.** This bill codifies student transportation aid payment sections as those provisions existed on June 30, 2001, updates provisions to reflect current practices and reimbursement rates, and prohibits school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements. (Education Funding Formula Review Committee)

**[House Bill No. 1028](#) - School District Ending Fund Balance Transfers.** This bill allows a school district to temporarily transfer excess funds accruing as a result of the Coronavirus (COVID-19) pandemic between the general fund and the building fund of the school district. (Education Funding Formula Review Committee)

**[House Bill No. 1029](#) - Public Employees Retirement System Self-Insurance Pharmacy Benefits.** This bill provides the Public Employees Retirement System the flexibility to purchase stop-loss insurance for self-insured pharmacy benefits. (Employee Benefits Programs Committee)

**[House Bill No. 1030](#) - Accessibility Improvements on the State Capitol Grounds.** This bill provides an appropriation of \$750,000 from the capitol building fund to the Office of Management and Budget, of which \$460,950 is for costs associated with the implementation of changes to the State Capitol grounds for compliance with the Americans with Disabilities Act of 1990 and \$289,050 is for additional costs to improve accessibility of the State Capitol during the 2021-23 biennium. (Government Administration Committee)

**[House Bill No. 1031](#) - Legislative Management Studies of State Agency Fees.** This bill creates a new section to Chapter 54-35 relating to Legislative Management studies of state agency fees on an ongoing basis. (Government Finance Committee)

**[House Bill No. 1032](#) - Prescription Drug Cost Transparency.** This bill directs the State Board of Pharmacy to collect and the Insurance Department to publish data regarding prescription drug costs. (Health Care Committee)

**[House Bill No. 1033](#) - Biosimilar Drugs.** This bill requires notice within 2 business days if a pharmacist substitutes an interchangeable biosimilar for the reference biologic and clarifies how notice may be provide by electronic means. (Health Care Committee)

**[House Bill No. 1034](#) - Civil Commitment Procedures.** The bill requires all parties in a civil commitment proceeding to receive a copy of the medical report pertaining to the hearing at least 24 hours before the hearing and updates references to coincide with existing definitions. (Judiciary Committee)

**[House Bill No. 1035](#) - Juvenile Justice.** The bill separates the existing sections within Chapter 27-20 into new chapters relating to the Uniform Juvenile Court Act, delinquency, and child welfare while incorporating the changes suggested by the Council of State Governments. (Judiciary Committee)

**[House Bill No. 1036](#) - Juvenile Justice System Study.** The bill provides for a continued study of the juvenile justice system with a focus on a review of the effective intervention, resources, and services for children. (Judiciary Committee)

**[House Bill No. 1037](#) - Legacy Earnings Fund Percent of Market Value Calculation.** This bill establishes a percent of market value method for determining the amount of legacy fund earnings available to be spent each biennium and creates a legacy earning fund. (Legacy Fund Earnings Committee)



[House Bill No. 1038](#) - **Legacy Fund Earnings Committee.** This bill creates a legacy fund earnings committee for the 2021-22 interim. (Legacy Fund Earnings Committee)

[House Bill No. 1039](#) - **Capitol Media Room.** This bill gives the North Dakota Newspaper Association and the North Dakota Broadcasters Association joint responsibility for the Capitol media room. (Legislative Procedure and Arrangements Committee)

[House Bill No. 1040](#) - **Deadline for Appealing a Workforce Safety and Insurance Decision.** This bill extends the 30-day time frame allotted for injured employees and employers to appeal or request reconsideration of a decision by Workforce Safety and Insurance to 45 days. The bill also removes the provision that the failure of an employer to file a response within 14 days from the day a response form was mailed to the employer constitutes the employer's admission the information in the claim form is correct. (Workers' Compensation Review Committee)

[House Concurrent Resolution No. 3001](#) - **Urge Congress to Amend Truck Length and Weight Restrictions for the Operation of Road Trains.** This resolution urges Congress to temporarily amend cargo carrying truck length and weight restrictions on state highways and interstates that are a part of the national network to allow North Dakota and surrounding states to conduct a road train pilot program and to permanently amend the restrictions to allow road trains on the national network highways and interstates if the pilot program is successful. (Agriculture and Transportation Committee)

[House Concurrent Resolution No. 3002](#) - **Recognizing the Memorandum of Understanding and Option to Acquire Land.** This resolution recognizes the memorandum of understanding and option to acquire land, upon approval by the Legislative Assembly, entered by the Department of Corrections and Rehabilitation and the Parks and Recreation Department relating to Missouri River Correctional Center land. (Government Finance Committee)

# SENATE

**Senate Bill No. 2026 - Governor's Authority to Exceed Size and Weight Limitations on Motor Vehicles for the Operation of Road Trains.** This bill allows the governor to exceed size and weight limitations on motor vehicles and allows for road trains meeting certain criteria to be operated in the state. (Agriculture and Transportation Committee)

**Senate Bill No. 2027 - Repeal of Transportation Network Company Reporting Requirements.** This bill repeals the section of the Century Code requiring transportation network companies to report information relating to where the companies operate in the state, the number of accidents reported, and the number of traffic violations reported, to the Department of Transportation twice each year. The repeal also removes the requirement that the department report the information to the Legislative Management each biennium. (Agriculture and Transportation Committee)

**Senate Bill No. 2028 - Repeal of Obsolete and Redundant Provisions in Title 15.1.** This bill repeals six sections of the Century Code relating to usage of the education stabilization fund, the revolving printing fund, school reports, the scholarships for 2009-10 high school graduates, district participation in the Goals 2000 Educate America Act, and a report on the use of state funds for professional development. (Education Policy Committee)

**Senate Bill No. 2029 - Guaranteed Issue.** This bill provides for guaranteed issue for small employer health insurance plans and individual health insurance plans, providing limited pre-existing condition provisions in cases of lapse of coverage. (Health Care Committee)

**Senate Bill No. 2030 - Higher Education Challenge Matching Grants.** This bill continues the higher education challenge matching grant program at its current funding level with an appropriation of \$9.65 million from the general fund. (Higher Education Committee)

**Senate Bill No. 2031 - Higher Education Funding Formula.** This bill amends the higher education funding formula to increase funding for credits completed in career and technical education (CTE) courses and computer science courses. (Higher Education Committee)

**Senate Bill No. 2032 - Higher Education Funding Formula Base Funding Rate.** This bill amends the higher education funding formula to provide for a reduced base funding amount for upper division non-CTE credits completed at 2-year institutions and an increased base funding amount for CTE credits completed at 4-year regional institutions. (Higher Education Committee)

**Senate Bill No. 2033 - Capital Building Fund Program.** This bill establishes the capital building fund program in the Century Code with no funding limitation on deferred maintenance and extraordinary repairs projects. The bill also creates a capital building fund under the control of the State Board of Higher Education, provides specific carryover authority for capital building fund money, and authorizes the use of capital building funds for certain capital projects. (Higher Education Committee)

**Senate Bill No. 2034 - Ethics Commission Authority.** The bill authorizes the North Dakota Ethics Commission to provide written advisory opinions upon the request of a public official, candidate for elected office, or lobbyist. (Judiciary Committee)

**Senate Bill No. 2035 - Technical Corrections.** This bill makes technical corrections throughout the Century Code. (Judiciary Committee)

**Senate Bill No. 2036 - Legislative Management Study of Access to Lands and Electronic Posting.** This bill provides for a continuation of the study of land access and related issues. (Natural Resources Committee)

**Senate Bill No. 2037 - Physical and Electronic Posting of Land.** This bill allows landowners to physically or electronically post land and to include all fenced land in the criminal trespass statute. (Natural Resources Committee)

**Senate Bill No. 2038 - Landowner Option to Physically or Electronically Post Land.** This bill gives landowners the option of either physically or electronically posting land. (Natural Resources Committee)

**Senate Concurrent Resolution No. 4001 - Federal Block Grant Hearings.** This resolution authorizes the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 67<sup>th</sup> Legislative Assembly through September 30, 2023. (Budget Section)