

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

BUDGET SECTION

Wednesday, July 11, 2018
Senate Chamber, State Capitol
Bismarck, North Dakota

Representative Larry Bellew, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Larry Bellew, Tracy Boe, Randy Boehning, Roger Brabandt, Mike Brandenburg, Jeff Delzer, Kathy Hogan, Richard G. Holman, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Chet Pollert, Mark Sanford, Mike Schatz, Jim Schmidt, Don Vigesaa; Senators Dick Dever, Robert Erbele, John Grabinger, David Hogue, Ray Holmberg, Ralph Kilzer, Jerry Klein, Karen K. Krebsbach, Gary A. Lee, Tim Mathern, Dave Oehlke, Larry J. Robinson, Ronald Sorvaag, Terry M. Wanzek, Rich Wardner

Members absent: Representatives Al Carlson, Lois Delmore, Tom Kading, Roscoe Streyle; Senators Bill L. Bowman, Joan Heckaman

Others present: Representative Jay Seibel, Beulah, and Senator Donald Schaible, Mott, members of the Legislative Management

See [Appendix A](#) for additional persons present.

It was moved by Senator Robinson, seconded by Senator Mathern, and carried on a voice vote that the minutes of the March 21, 2018, meeting be approved as distributed.

ECONOMIC INDICATORS

Mr. Joe Morrisette, Director, Office of Management and Budget, presented information ([Appendix B](#)) on key economic indicators, including consumer prices, money markets, personal income, commodity prices, unemployment, employment growth, personal income, energy prices and production, and mortgage rates. He said national commodity prices increased by an average of 3.8 percent during 2017 due to a 2.1 percent increase in crop prices and a 5.8 percent increase in livestock prices. He said North Dakota's nonseasonally adjusted unemployment rate in May 2018 was 2.2 percent. He said the national average unemployment rate decreased from 4.5 percent in January 2018 to 3.6 percent in May 2018. He said the current number of North Dakota oil rigs is 64 rigs, which is 8 rigs more than the number operating in the state 1 year ago. He said the average price per barrel of oil in North Dakota was \$61.11 in April 2018. He said the average number of barrels of oil produced in North Dakota was 1,224,947 in April 2018.

STATUS OF THE 2017-19 BIENNIUM GENERAL FUND

Mr. Morrisette presented a report ([Appendix C](#)) on the status of the general fund for the 2017-19 biennium through June 2018.

Unobligated general fund balance - July 1, 2017		\$65,000,000
Balance obligated for authorized carryover from the 2015-17 biennium		99,271,093
Total beginning general fund balance - July 1, 2017		\$164,271,093
Add		
General fund collections through June 2018	\$2,264,580,611	
Forecast general fund revenue for the remainder of the 2017-19 biennium	2,137,764,950	
Total revenues		4,402,345,561
Total available		\$4,566,616,654
Less		
Legislative appropriations - One-time	(\$14,638,226)	
Legislative appropriations - Ongoing	(4,295,624,415)	
Authorized carryover from the 2015-17 biennium	(99,271,093)	
Total appropriations		(4,409,533,734)
Estimated ending general fund balance - June 30, 2017		\$157,082,920 ¹

¹Pursuant to North Dakota Century Code Chapter 54-27.2, any end-of-biennium balance in excess of \$65 million is transferred to the budget stabilization fund, up to a maximum of 15 percent of general fund appropriations.

Mr. Morrisette said as of June 2018, the balance in the budget stabilization fund was \$113.3 million, the legacy fund balance was \$5.5 billion, the foundation aid stabilization fund balance was \$463.5 million, the tax relief fund balance was \$200.0 million, and the strategic investment and improvements fund balance was \$314.1 million.

Mr. Morrisette presented information ([Appendix D](#)) on actual and forecasted 2017-19 biennium general fund revenue compared to the 2017 legislative forecast. He said revenue collected during the biennium through June 2018 was \$72.5 million, or 3.3 percent more than forecasted. He said the increase is primarily due to additional revenue collected from sales tax (\$10.2 million), individual income tax (\$23.6 million), and corporate income tax (\$37.8 million). After excluding major special fund transfers, he said, 2017-19 biennium revenue collections through June 2018 are comparable to 2015-17 biennium revenue collections through June 2016.

In response to a question from Representative Mock, Mr. Morrisette said the increase in sales tax collections compared to the 2017 legislative forecast is primarily from the oil and gas industry in western North Dakota.

IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE

Pursuant to Section 54-14-03.1, Mr. Morrisette presented information ([Appendix E](#)) on irregularities in the fiscal practices of the state. He presented the following fiscal irregularities for the period March 2018 through June 2018:

Fiscal Irregularity	Agency	Description	Amount
Pay adjustment	State Department of Health	Sick leave payout	\$1,599
Pay adjustment	State Department of Health	Compensation for additional strategic and organizational responsibilities for two individuals	\$1,382
Retroactive pay	School for the Blind	One teacher retired prior to 12-month contract concluding. Compensation for remaining 3 months of contract and 10 percent of sick leave.	\$10,946
Retroactive pay	Securities Department	Pay increase approved by the Governor on January 30, 2018, for work performed by one individual since July 1, 2017	\$10,192
Retroactive pay	Department of Corrections and Rehabilitation	Compensation for additional workload for one individual	\$792
Retroactive pay	Workforce Safety and Insurance	Compensation for additional workload for one individual	\$1,356
Retroactive pay	Public Employees Retirement System	Compensation for additional workload for three individuals	\$2,884
Retroactive pay	Department of Corrections and Rehabilitation	Stipends provided for teacher licenses for three individuals	\$2,400
Retroactive pay	Department of Corrections and Rehabilitation	Compensation for additional workload for one individual	\$768
Severance pay	Department of Commerce	Severance payments for a reduction-in-force for 13 individuals	\$190,722
Severance pay	Department of Human Services	Voluntary separation incentive program for one individual	\$23,332

In response to a question from Representative Mock, Mr. Morrisette said he was not aware of the amount of salary savings that will be realized by the Department of Commerce due to the department's reduction-in-force. He said he will collaborate with the department to obtain that information to provide to the Budget Section.

STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS

Mr. Morrisette presented information ([Appendix F](#)) on state agencies that applied for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. He said for the period March 2018 through June 2018, the following agencies have applied for a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount Requested
Department of Public Instruction	2018 through 2022	\$3,700,000
Department of Public Instruction	September 2018 through September 2020	\$100,000
Department of Agriculture	October 2018 through September 2020	\$300,000

Mr. Morrisette said for the period March 2018 through June 2018, the following agencies have been awarded a federal grant of \$25,000 or more:

Agency	Time Period of Grant	Amount Awarded
State Library	July 2018 through June 2020	\$249,000
Housing Finance Agency	November 2017 through November 2020	\$265,000

TOBACCO SETTLEMENT PROCEEDS

Mr. Morrissette presented information ([Appendix G](#)) on the status of North Dakota tobacco settlement proceeds received. He said since December 1999, the state of North Dakota has received a total of \$475.0 million of settlement payments from tobacco companies. Of this amount, he said, \$71.3 million has been deposited in the community health trust fund, \$189.7 million has been deposited in the common schools trust fund, \$213.6 million has been deposited in the water development trust fund, and \$400,000 was appropriated to the Attorney General during the 2015-17 and 2017-19 bienniums. He said of the \$200,000 appropriated to the Attorney General for the 2015-17 biennium, \$159,000 was not spent and will be returned to the tobacco settlement trust fund and distributed to the community health trust fund and water development trust fund.

Mr. Morrissette said 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. He said tobacco settlement payments during the 2017-19 biennium are 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. At the conclusion of the current biennium, he said, the allocation percentages will revert to the percentage format established prior to the 2017-19 biennium.

AGENCY BUDGET REQUESTS

Mr. Morrissette presented information ([Appendix H](#)) on the status of agency budget requests submitted and any extensions requested or granted. He said 62 of 73 state agencies have requested and been granted budget extensions. He said the majority of these extensions allow agencies to submit budget requests by August 31, 2018, rather than July 15, 2018. He said 8 agencies have been granted budget extensions through September 2018 and 2 agencies are required to submit their budget requests by October 1, 2018.

PRELIMINARY REVENUE FORECAST

Mr. Morrissette presented information on the status of the preliminary revenue forecast. He said the Revenue Advisory Council will be meeting with Moody's to discuss the status of the economy. He said a preliminary forecast may be available in mid-August.

AGENCY REQUESTS APPROVED BY THE EMERGENCY COMMISSION - JUNE 28, 2018, MEETING

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

- **State Library (Request #1916)** - Request an increase in federal funds spending authority by \$124,500 in the grants to libraries line item to accept and expend federal funds from the Institute of Museum and Library Services
- **Adjutant General (Request #1921)** - Request authorization to spend \$1,312,221 from the state disaster relief fund pursuant to Section 37-17.1-27 for reimbursing political subdivisions for the state share of disaster-related costs that have been incurred and submitted to the Adjutant General for payment relating to previous state disasters

It was moved by Representative Nelson, seconded by Senator Robinson, and carried on a roll call vote that the Budget Section approve Request #1916, which was approved by the Emergency Commission. Representatives Bellew, Boe, Boehning, Brabandt, Brandenburg, Delzer, Hogan, Holman, Kreidt, Martinson, Meier, Mock, Monson, Nathe, Nelson, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Dever, Erbele, Grabinger, Hogue, Holmberg, Kilzer, Klein, Krebsbach, Lee, Mathern, Oehlke, Robinson, Sorvaag, Wanzek, and Wardner voted "aye." No negative votes were cast.

It was moved by Senator Robinson, seconded by Representative Mock, and carried on a roll call vote that the Budget Section approve Request #1921, which was approved by the Emergency Commission. Representatives Bellew, Boe, Boehning, Brabandt, Brandenburg, Delzer, Hogan, Holman, Kreidt, Martinson, Meier, Mock, Monson, Nathe, Nelson, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Dever, Erbele, Grabinger, Hogue, Holmberg, Kilzer, Klein, Krebsbach, Lee, Mathern, Oehlke, Robinson, Sorvaag, Wanzek, and Wardner voted "aye." No negative votes were cast.

GAME AND FISH DEPARTMENT - LAND ACQUISITIONS

Mr. Casey Anderson, Assistant Chief, Wildlife Division, Game and Fish Department, presented information ([Appendix J](#)) on a proposed land acquisition in Morton County pursuant to Section 20.1-02-05.1. He said the land acquisition consists of 80 acres and is adjacent to the department's Storm Creek Wildlife Management Area. He said the owners of the property contacted the department for a potential sale to allow the department to manage the property for the benefit of North Dakota wildlife. He said the property was appraised at \$138,000, or \$1,725 per acre. He said four chapters of North Dakota Pheasants Forever have pledged \$20,000 to the department for the purchase of the property.

In response to a question from Representative Nelson, Mr. Anderson said the Department of Transportation may not always use land acquired by the Game and Fish Department for mitigation program purposes. He said the proposed land acquisition in Morton County is considered upland property. He said the Department of Transportation is often interested in wetland property. He said if the Game and Fish Department receives requests to purchase wetland property, those requests are often forwarded to the Department of Transportation. He said wetland property purchased by the Game and Fish Department may not always qualify for the Department of Transportation's mitigation purposes.

Representative Brandenburg expressed concern regarding the relationship between North Dakota landowners and sportsmen and the Game and Fish Department. He said certain activities of the department have caused negative consequences for landowners.

In response to a question from Representative Schmidt, Mr. Anderson said federal funds are not always used for land acquisitions. He said \$800,000 of special funds has been appropriated to the Game and Fish Department for land acquisitions each biennium since the 2009-11 biennium. He said this funding is primarily used to purchase land, rather than federal funds. He said if federal funds are used, the funds are often used to manage the purchased property.

In response to a question from Representative Schmidt, Mr. Anderson said the Game and Fish Department does not have a predetermined number of acres of land planned to be purchased or leased and managed. He said the department has made efforts to purchase property adjacent to existing department property to minimize the cost to maintain the land.

In response to a question from Senator Wanzek, Mr. Anderson said the proposed land acquisition in Morton County has been in the conservation reserve program since the 1980s. He said the cost to restore the land will be minimal and the majority of land costs will be related to maintenance.

In response to a question from Senator Erbele, Mr. Anderson said the department is required to contact all landowners located within 1 mile of a proposed land acquisition site. He said a letter was sent to landowners surrounding the proposed property in Morton County. He said the landowner selling the property could choose to sell the property to neighboring landowners instead of the department.

In response to a question from Representative Delzer, Mr. Anderson said the department is only required to use one appraiser when evaluating a proposed land acquisition. He said there have been previous land acquisitions where the landowner requested a second appraisal, but the second appraisal is typically very similar to the first appraisal. He said the department is not allowed to purchase property for more than the appraised value.

Representative Nelson suggested the Budget Section receive information on Game and Fish Department land acquisitions that have been used for Department of Transportation mitigation purposes.

Representative Kreidt said the land the Game and Fish Department has requested to purchase is near his property. He said if the land was sold to a private individual rather than the Game and Fish Department, the land could be sold for \$2,000 to \$2,500 per acre. He said some neighboring landowners do not support the Game and Fish Department's proposed purchase of land in Morton County.

It was moved by Representative Nelson, and seconded by Senator Mathern, that pursuant to Section 20.1-02-05.1 the Budget Section approve the Game and Fish Department's land acquisition in Morton County. Representatives Bellew, Boe, Boehning, Hogan, Holman, Martinson, Mock, and Nelson, and Senators Kilzer, Mathern, and Robinson voted "aye." Representatives Brabandt, Brandenburg, Delzer, Kempenich, Kreidt, Meier, Monson, Nathe, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Dever, Erbele, Grabinger, Hogue, Holmberg, Klein, Krebsbach, Lee, Oehlke, Sorvaag, Wanzek, and Wardner voted "nay." **The motion failed.**

STATE AGENCY UNCLAIMED PROPERTY

Ms. Susan Dollinger, Administrator, Unclaimed Property Division, Department of Trust Lands, presented a report ([Appendix K](#)) on state agencies that have not submitted a claim for unclaimed property belonging to those agencies. She said 13 agencies have unclaimed property with a total value of \$17,216.

It was moved by Senator Mathern, seconded by Senator Robinson, and carried on a roll call vote that pursuant to Section 47-30.1-24.1, the Budget Section approve the list provided by the Board of University and School Lands of the following state agencies relinquishing their rights to recover unclaimed property:

- **Job Service North Dakota**
- **University of North Dakota**
- **North Dakota State University**
- **Department of Human Services**
- **Office of Management and Budget**
- **Department of Corrections and Rehabilitation**
- **Housing Finance Agency**
- **North Dakota State College of Science**
- **Securities Department**
- **Department of Transportation**
- **Tax Commissioner**
- **Bank of North Dakota**
- **Department of Agriculture**

Representatives Bellew, Boe, Brabandt, Brandenburg, Delzer, Hogan, Holman, Kempenich, Kreidt, Martinson, Meier, Mock, Monson, Nathe, Nelson, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Dever, Erbele, Grabinger, Hogue, Holmberg, Kilzer, Klein, Krebsbach, Lee, Mathern, Oehlke, Robinson, Sorvaag, Wanzek, and Wardner voted "aye." No negative votes were cast.

INDUSTRIAL COMMISSION ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION

Ms. Robyn Loumer, Budget Specialist III, Department of Mineral Resources, Industrial Commission, presented information ([Appendix L](#)) regarding the balance of the abandoned oil and gas well plugging and site reclamation fund pursuant to Section 38-08-04.5. She said the fund's 2017-19 biennium beginning balance was \$17.4 million. As of June 30, 2018, she said, the estimated fund balance is \$18.4 million, reflecting 2017-19 biennium revenues through June 2018 of \$6.3 million and estimated expenditures through June 2018 of \$5.3 million.

ATTORNEY GENERAL Tobacco Settlement Payments

Mr. Wayne Stenehjem, Attorney General, presented information on recent tobacco settlement payments received from tobacco companies. He said as a part of the 1997 Master Settlement Agreement, tobacco companies agreed to pay the states named in the agreement annual payments. He said annual payments to the participating states have totaled over \$100 billion during this time, of which \$475 million has been paid to North Dakota. He said the participating states and tobacco companies participated in arbitration in 2003 and 2004. He said the tobacco companies participating in the settlement agreement previously claimed North Dakota did not appropriately enforce the requirement of nonparticipating tobacco companies to deposit settlement claims into an escrow account. He said this resulted in the participating tobacco companies to withhold payment from North Dakota. He said North Dakota recently reached a settlement with the tobacco companies, resulting in \$34 million being paid to North Dakota to settle all existing tobacco-related claims. He said a time value of money analysis revealed that receiving the \$34 million provided an economic advantage compared to continuing to seek additional payments from tobacco companies. In April 2018, he said, 55 percent of the \$34 million settlement was deposited in the community health trust fund and 45 percent was deposited in the water development trust fund.

Litigation-Related Expenditures

Mr. Stenehjem presented information ([Appendix M](#)) regarding a report on all expenditures for litigation-related expenses from the Industrial Commission litigation fund pursuant to Section 5 of 2017 House Bill No. 1003. As of June 25, 2018, he said, the Attorney General's office has spent \$1,923,423 on seven lawsuits from the litigation

fund for litigation-related expenditures, of which \$1,170,703 was spent during the 2015-17 biennium and \$752,720 was spent during the 2017-19 biennium.

2017-19 BIENNIUM REPORT ON COMPLIANCE WITH LEGISLATIVE INTENT

Chairman Bellew called on the Legislative Budget Analyst and Auditor to present the [2017-19 Biennium Report on Compliance With Legislative Intent](#) and the [Analysis of State Trust Funds for the 2015-17 and 2017-19 Bienniums](#). The Legislative Budget Analyst and Auditor said in addition to the printed report, the information is available on the legislative branch website.

LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD REPORT

Representative Kempenich, Chairman, Legacy and Budget Stabilization Fund Advisory Board, presented a status report ([Appendix N](#)) regarding the investment of funds in the legacy fund and budget stabilization fund pursuant to Section 21-10-11. He said the market value of the budget stabilization fund as of March 31, 2018, was \$38.3 million. He said the budget stabilization fund received a \$62 million transfer from oil and gas tax collections on May 21, 2018, which is not yet reflected in the market value of the fund.

Representative Kempenich said the balance of the legacy fund was \$4.63 million as of June 30, 2017, and is estimated to be \$5.56 billion as of June 30, 2019. As of March 31, 2018, he said, the market value of the legacy fund was \$5.38 billion. Through March 31, 2018, he said net earnings in the legacy fund totaled \$1.06 billion from inception, including \$608.5 million of realized earnings based on the definition of earnings in Section 21-10-12. As of May 31, 2018, he said, earnings of the legacy fund eligible for transfer to the general fund at the end of the 2017-19 biennium is \$222.7 million.

STATE BOARD OF HIGHER EDUCATION - VALLEY CITY STATE UNIVERSITY INTEGRATED CARBON PLANT PROJECT

Mr. Wesley Wintch, Vice President for Business Affairs, Valley City State University, presented information ([Appendix O](#)) on the status of the integrated carbon plant project at Valley City State University pursuant to Section 3 of 2017 Senate Bill No. 2196. He said the project has potential to generate a new revenue stream for Valley City State University, allow for a decrease in utility expenditures, and create student research and teaching opportunities while lowering the university's carbon footprint. He said the 2017 Legislative Assembly authorized the university to proceed with the project by using revenue bonds of up to \$22.5 million. He said the university is working to secure bond financing and has contracted with Barr Engineering to conduct an independent feasibility study and market analysis. He said the study should be complete in fall 2018. He said if the study results reveal the technology and financial potential of the project can be obtained, bond sales would be completed in approximately 2 to 3 months. He said the plant would require 18 to 24 months to construct.

ELECTRONIC PAYMENT PROCESSING SYSTEM

Mr. Joe Herslip, Senior Vice President, Bank of North Dakota, presented information ([Appendix P](#)) regarding the electronic payment processing system and credit card fees charged to state agencies. He said the parties involved in the acceptance of credit cards by a merchant include credit card associations, credit card issuing banks, credit card processors, point of sale systems, and merchant account providers. He said the Bank of North Dakota provides service and support to state agencies throughout the credit card payment process. He said the types of credit card processing fees include transactional fees, flat fees, and incidental fees. He said credit card processing pricing models include interchange plus, tiered, a flat or bended, and a subscription or membership model. He said the state uses an interchange plus model.

Mr. Herslip said Bank of North Dakota monthly merchant card fees include a payment card industry compliance fee (\$5), accounts on file fee (\$12), and wireless accounts on file fee (\$15). Regarding transaction fees, he said, interchange fees set by credit card associations such as Visa range from 1.5 percent to 4 percent. He said the Bank of North Dakota charges a \$0.05 authorization fee and a 0.05 percent transaction fee per credit card transaction. He said the state's credit card processor is Chase Bank, which charges a \$0.04 authorization fee and a 0.04 percent transaction fee per credit card transaction.

Mr. Herslip said 2,004,381 state agency transactions were processed by the Bank of North Dakota during 2017, resulting in \$3.18 million of credit card fees paid by agencies. Of this amount, he said, the Bank of North Dakota realized a net profit of \$107,483. He said the average transaction fee is 2.08 percent.

Mr. Herslip said the electronic payment processing system involves using the Chase Bank Pay Connexion program, which charges customers a 2.5 percent fee for credit card transactions. He said the Bank of North Dakota does not receive any portion of credit card fees when an agency uses the Connexion program. He said this differs from the Chase Bank Paymentech program that the majority of state agencies currently use. He said the

Paymentech program does not charge customers credit card fees and instead requires state agencies to pay the fees. He said American Express has a separate agreement with the Bank of North Dakota regarding merchant credit card transaction fees.

In response to a question from Representative Nathe, Mr. Herslip said the average time from the purchase by customer to the deposit of funds with an agency is 1 to 2 days.

Representative Pollert expressed concern regarding the cost of credit card transactions. He said the cost for companies to conduct business using credit cards is more than writing checks.

In response to comments by Representative Pollert, Mr. Herslip said credit card fees vary depending on what kind of credit card a customer uses. He said credit card transaction fees are higher for online transactions than transactions at retail locations due to online fraud risk.

In response to a question from Representative Boehning, Mr. Herslip said in North Dakota transaction fees are the same for credit cards and debit cards.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION - STATUS REPORT

At the request of Chairman Bellew, the Legislative Council staff distributed a written report ([Appendix Q](#)) from the State Board of Agricultural Research and Education regarding its activities pursuant to Section 15-12.1-17.

OTHER INFORMATION

Chairman Bellew said the next Budget Section meeting will be Thursday, September 13, 2018.

No further business appearing, Chairman Bellew adjourned the meeting at 12:10 p.m.

Levi Kinnischtzke
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:17