

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

BUDGET SECTION

Thursday, September 13, 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, Randy Boehning, Roger Brabandt, Mike Brandenburg, Al Carlson, Jeff Delzer, Richard G. Holman, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Corey Mock, David Monson, Mike Nathe, Chet Pollert, Mark Sanford, Mike Schatz, Jim Schmidt, Don Vigesaa; Senators Bill L. Bowman, Dick Dever, Robert Erbele, John Grabinger, Joan Heckaman, David Hogue, Ray Holmberg, Ralph Kilzer, Jerry Klein, Gary A. Lee, Tim Mathern, Dave Oehlke, Ronald Sorvaag, Terry M. Wanzek, Rich Wardner

Members absent: Representatives Tracy Boe, Lois Delmore, Kathy Hogan, Tom Kading, Jon O. Nelson, Roscoe Streytle; Senators Karen K. Krebsbach, Larry J. Robinson

Others present: John Bjornson, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Senator Wardner, seconded by Senator Klein, and carried on a voice vote that the minutes of the July 11, 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 North Dakota's non-seasonally adjusted unemployment rate was 2.4 percent in July 2018. He said the national average unemployment rate increased from 3.6 percent in May 2018 to 4.1 percent in July 2018. He said North Dakota's total employment decreased by 2.8 percent from July 2017 to July 2018, while national total employment increased by 1.6 percent. He said the average price per barrel of oil in June 2018 was \$61.99 and the average number of barrels produced per day was 1,225,510.

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 including the following schedule on the status of the general fund through August 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 August 2018	\$2,834,496,132	
Forecast general fund revenue for the remainder of the 2017-19 biennium	1,600,526,932	
Total revenues		4,435,023,064
Total available		\$4,599,294,157
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)
Less anticipated deficiency requests:		
Adjutant General	(\$15,500,802)	
Historical Society	(280,000)	
Office of Management and Budget	(408,000)	
Total anticipated deficiency requests		(16,188,802)
Add anticipated turnback:		
Governor's office	\$265,928	

Department of Public Instruction - State school aid	11,300,000	
Total anticipated turnback		11,565,928
Estimated ending general fund balance - June 30, 2019		\$185,137,549 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 August 2018, the balance in the budget stabilization fund was \$113.3 million, the balance in the legacy fund was \$5.7 billion, the balance in the foundation aid stabilization fund was \$480.6 million, the balance in the tax relief fund was \$200.0 million, and the balance in the strategic investment and improvements fund was \$325.8 million. He said the first allocation from oil and gas tax collections was deposited in the strategic investment and improvements fund in August 2018, totaling \$14.0 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 for the biennium to date through August 2018 was \$105.2 million, or 3.9 percent, more than forecasted. He said the increase is primarily due to additional revenue collected from sales tax (\$20.4 million), individual income tax (\$35.7 million), and corporate income tax (\$39.4 million).

2017-19 BIENNIUM REVISED REVENUE FORECAST

Mr. Morrisette presented information ([Appendix E](#)) on the 2017-19 biennium revised general fund revenue forecast compared to the 2017 legislative forecast.

Tax Type	2017 Legislative Forecast	September 2018 Revised Revenue Forecast	Amount of Increase (Decrease) from Legislative Forecast	Percentage Increase (Decrease) from Legislative Forecast
Sales and use taxes	\$1,701,747,285	\$1,722,635,206	\$20,887,921	1.2%
Motor vehicle excise tax	220,003,000	231,144,237	11,141,237	5.1%
Individual income tax	698,728,000	757,683,125	58,955,125	8.4%
Corporate income tax	102,088,415	164,894,170	62,805,755	61.5%
Insurance premium tax	129,637,121	109,325,897	(20,311,224)	(15.7%)
Gaming tax	7,301,480	6,528,321	(773,159)	(10.6%)
Cigarette and tobacco tax	53,247,000	52,054,548	(1,192,452)	(2.2%)
Wholesale liquor tax	18,083,000	17,877,575	(205,425)	(1.1%)
Coal conversion tax	39,564,000	41,937,227	2,373,227	6.0%
Mineral leasing fees	30,500,000	31,930,066	1,430,066	4.7%
Departmental collections	81,983,864	83,429,676	1,445,812	1.8%
Interest income	8,000,000	7,944,850	(55,150)	(0.7%)
Total revenues	\$3,090,883,165	\$3,227,384,900	\$136,501,735	4.4%

2019-21 BIENNIUM PRELIMINARY REVENUE FORECAST

Mr. Morrisette presented information ([Appendix F](#)) on the 2019-21 biennium preliminary general fund revenue forecast compared to the 2017-19 biennium revised general fund revenue forecast.

Tax Type	2017-19 Biennium Revised Revenue Forecast	2019-21 Biennium Preliminary Revenue Forecast	Amount of Increase (Decrease) from Revised Forecast	Percentage Increase (Decrease) from Revised Forecast
Sales and use taxes	\$1,722,635,206	\$1,894,204,000	\$171,568,794	10.0%
Motor vehicle excise tax	231,144,237	245,972,000	14,827,763	6.4%
Individual income tax	757,683,125	806,483,000	48,799,875	6.4%
Corporate income tax	164,894,170	95,486,000	(69,408,170)	(42.1%)
Insurance premium tax	109,325,897	105,500,000	(3,825,897)	(3.5%)
Gaming tax	6,528,321	6,850,000	321,679	4.9%
Cigarette and tobacco tax	52,054,548	48,281,000	(3,773,548)	(7.2%)
Wholesale liquor tax	17,877,575	18,757,000	879,425	4.9%
Coal conversion tax	41,937,227	38,032,000	(3,905,227)	(9.3%)
Mineral leasing fees	31,930,066	32,000,000	69,934	0.2%
Departmental collections	83,429,676	84,000,000	570,324	0.7%
Interest income	7,944,850	8,200,000	255,150	3.2%
Total revenues	\$3,227,384,900	\$3,383,765,000	\$156,380,100	4.8%

2017-19 BIENNIUM REVISED OIL TAX REVENUE DISTRIBUTIONS

Mr. Morrisette presented information ([Appendix G](#)) on the 2017-19 biennium revised forecast on distributions from gross production and oil extraction tax collections compared to distribution projections from the 2017 legislative forecast.

Tax Type	2017 Legislative Forecast	September 2018 Revised Revenue Forecast	Revised Forecast Increase (Decrease) to Original Forecast	Percentage Increase (Decrease)
Political subdivisions	\$499,644,769	\$666,578,370	\$166,933,601	33.4%
Three Affiliated Tribes	233,972,756	440,328,146	206,355,389	88.2%
Legacy fund	865,827,862	1,243,174,990	377,347,128	43.6%
Foundation aid stabilization fund	130,926,961	179,803,662	48,876,701	37.3%
Common schools trust fund	130,926,961	179,803,662	48,876,701	37.3%
Resources trust fund	258,653,919	356,407,324	97,753,405	37.8%
Renewable energy development fund	3,000,000	3,000,000	0	0.0%
Energy conservation grant fund	200,000	200,000	0	0.0%
Oil and gas research fund	10,000,000	10,000,000	0	0.0%
Oil and gas impact fund	29,145,670	28,353,446	(792,224)	(2.7%)
North Dakota outdoor heritage fund	10,871,198	10,799,177	(72,021)	(0.7%)
Abandoned well and site reclamation fund	8,435,599	8,399,588	(36,010)	(0.4%)
General fund	400,000,000	400,000,000	0	0.0%
Tax relief fund	200,000,000	200,000,000	0	0.0%
Budget stabilization fund	75,000,000	75,000,000	0	0.0%
State disaster relief fund	0	0	0	0.0%
Energy impact fund	4,000,000	4,000,000	0	0.0%
Lignite research fund	3,000,000	3,000,000	0	0.0%
Strategic investment and improvements fund	256,459,929	775,396,416	518,936,487	202.3%
Total revenues	\$3,120,065,624	\$4,584,244,781	\$1,464,179,157	31.9%

Mr. Morrisette said the current price of oil is \$61.99 per barrel. He said the 2017-19 biennium revised revenue forecast includes an estimated price per barrel of \$58.08 and production of 1.23 million barrels per day.

2019-21 BIENNIUM PRELIMINARY OIL REVENUE DISTRIBUTIONS

Mr. Morrisette presented information ([Appendix H](#)) on the 2019-21 biennium preliminary forecast for distributions from gross production and oil extraction tax collections compared to distributions projections from the 2017-19 biennium revised revenue forecast.

Tax Type	2017-19 Biennium Revised Revenue Forecast	2019-21 Biennium Preliminary Revenue Forecast	2019-21 Preliminary Forecast Amount of Increase (Decrease) to 2017-19 Revised Forecast	Percentage Increase (Decrease)
Political subdivisions	\$666,578,370	\$679,911,951	\$13,333,581	2.0%
Three Affiliated Tribes	440,328,146	463,632,654	23,304,508	5.3%
Legacy fund	1,243,174,990	1,309,762,247	66,587,257	5.4%
Foundation aid stabilization fund	179,803,662	193,100,610	13,296,949	7.4%
Common schools trust fund	179,803,662	193,100,610	13,296,949	7.4%
Resources trust fund	356,407,324	382,001,221	25,593,897	7.2%
Renewable energy development fund	3,000,000	3,000,000	0	0.0%
Energy conservation grant fund	200,000	1,200,000	1,000,000	500.0%
Oil and gas research fund	10,000,000	10,000,000	0	0.0%
Oil and gas impact fund	28,353,446	5,000,000	(23,353,446)	(82.4%)
North Dakota outdoor heritage fund	10,799,177	31,539,766	20,740,589	192.1%
Abandoned well and site reclamation fund	8,399,588	15,000,000	6,600,412	78.6%
General fund	400,000,000	300,000,000	(100,000,000)	(25.0%)
Tax relief fund	200,000,000	200,000,000	0	0.0%
Budget stabilization fund	75,000,000	75,000,000	0	0.0%
State disaster relief fund	0	0	0	0.0%
Energy impact fund	4,000,000	0	(4,000,000)	(100.0%)
Lignite research fund	3,000,000	3,000,000	0	0.0%
Strategic investment and improvements fund	775,396,416	964,257,750	188,861,334	24.4%
Total revenues	\$4,584,244,781	\$4,829,506,809	\$245,262,029	5.1%

Mr. Morrisette said the 2019-21 biennium preliminary revenue forecast includes an estimated price per barrel of \$53.00 and production of 1.31 million barrels per day.

AGENCY BUDGET REQUESTS

Mr. Morrisette presented information ([Appendix I](#)) on the status of agency budget requests submitted and extensions requested or granted. He said 65 of 73 state agencies requested and were granted budget extensions. He said 60 state agencies have submitted a budget request to the Office of Management and Budget. He said the remaining state agency budget requests are due by October 1, 2018.

IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE

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

Fiscal Irregularity	Agency	Description	Amount
Pay adjustment	School for the Blind	Adjustment for four teachers working additional days for summer contracts	\$12,594
Retroactive pay	Soybean Council	Additional workload for one individual while in dual role of Executive Director and Director of Market Development	\$10,000
Severance pay	Department of Human Services	Negotiated settlement agreement for one individual	\$57,268
Severance pay	State Auditor's office	Voluntary separation incentive program for one individual	\$21,707

STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS

Mr. Morrissette presented information ([Appendix K](#)) 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 July 2018 through August 2018, the following agency applied for a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount Requested
Department of Agriculture	May 2019 through April 2020	\$45,000

Mr. Morrissette said for the period July 2018 through August 2018, the following agency was awarded a federal grant of \$25,000 or more:

Agency	Time Period of Grant	Amount Awarded
Job Service North Dakota	July 2018 through June 2021	\$450,000

EMPLOYEE BONUSES

Mr. Morrissette presented information ([Appendix L](#)) on the number of state employees receiving salary bonuses pursuant to Section 54-06-30. He said state agencies may not give bonuses to more than 25 percent of its employees, except in special circumstances approved by the Human Resource Management Services Division of the Office of Management and Budget. During fiscal year 2018, he said, 21 state agencies awarded 257 performance bonuses to employees, totaling \$236,941. Of the 21 state agencies, two agencies, the North Dakota School for the Blind and the Insurance Commissioner, exceeded the 25 percent employee bonus limitation.

BANK OF NORTH DAKOTA LOANS

Mr. Morrissette presented information ([Appendix M](#)) regarding loans provided by the Bank of North Dakota to state agencies during the 2017-19 biennium. He said the Bank of North Dakota has provided nine loans totaling \$371.1 million. Of this amount, he said, \$103.5 million has been spent through August 2018.

DEFICIENCY APPROPRIATIONS

Mr. Morrissette presented information ([Appendix N](#)) regarding anticipated agency deficiency appropriations for the 2017-19 biennium. He said through August 2018, three agencies anticipate requesting deficiency appropriations totaling \$16.2 million from the 2019 Legislative Assembly. He said the Office of Management and Budget anticipates requesting \$408,000 for expenditures related to a lawsuit with Comstock Construction, Inc. He said the Adjutant General anticipates requesting \$15.5 million for 2017 flood disaster costs (\$1.2 million), to replay a loan for costs relating to the unlawful activity associated with the construction of the Dakota Access Pipeline (\$12.8 million), and to repay a loan for the 2017 emergency hay transportation program (\$1.5 million). He said the State Historical Society anticipates requesting a deficiency appropriation of \$280,000 for legal expenditures related to a lawsuit with Comstock Construction, Inc.

VOLUNTARY SEPARATION INCENTIVE PROGRAM

Mr. Morrissette presented information ([Appendix O](#)) regarding the status of the voluntary separation incentive program. Through August 2018, he said, 19 agencies have offered the program, resulting in 295 employee applications for the program, of which 40 applications have been accepted. He said the remaining applications are being reviewed to determine if they will be accepted.

In response to a question from Representative Carlson, Mr. Morrissette said after agencies accept voluntary separation incentive applications, some positions may not be rehired or may be combined with the duties of other positions, while other positions may be rehired at a lower salary or the position may be reclassified to a different position to meet the needs of the agency and realize budget savings.

AGENCY REQUESTS APPROVED BY THE EMERGENCY COMMISSION - AUGUST 30, 2018, MEETING

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

- **Adjutant General (Request #1922)** - Request authorization to spend \$464,602 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
- **Secretary of State (Request #1923)** - Request to accept \$3 million of federal funds received from the Federal Election Assistance Commission for the Federal Help America Vote Act

Senator Hogue expressed concern regarding the Budget Section's authority to approve or reject agency requests due to the North Dakota Supreme Court's decision in *North Dakota Legislative Assembly v. Burgum*.

It was moved by Senator Wardner, seconded by Senator Wanzek, and carried on a roll call vote that the Budget Section approve Requests #1922 and #1923, which were approved by the Emergency Commission. Representatives Bellew, Boehning, Brabandt, Brandenburg, Carlson, Delzer, Holman, Kempenich, Kreidt, Martinson, Meier, Mock, Monson, Nathe, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Bowman, Dever, Erbele, Grabinger, Heckaman, Holmberg, Kilzer, Klein, Lee, Mathern, Sorvaag, Wanzek, and Wardner voted "aye." Senators Hogue and Oehlke voted "nay."

HIGHWAY PATROL - PURCHASE OF UNMANNED AIRCRAFT SYSTEMS

Colonel Brandon Solberg, Superintendent, North Dakota Highway Patrol, presented information ([Appendix Q](#)) regarding a proposal to purchase drones for crash reconstruction and search and rescue purposes pursuant to Section 54-06-37. He said the drones are considered unmanned aircraft systems (UAS) and would provide the Highway Patrol with the ability to view complex crashes, active threat situations, and search and rescue operations from an aerial perspective. He said the drones would allow first responders to make better informed decisions by using the more current information. He said the drones are equipped with multiple new technologies, including three-dimensional imaging to help first responders assess and evaluate crash scenes from multiple angles. He said the estimated cost of the drones and related equipment is approximately \$45,000.

In response to a question from Representative Carlson regarding the authority of the Budget Section to approve this request due to the North Dakota Supreme Court's decision in *North Dakota Legislative Assembly v. Burgum*, Mr. John Bjornson, Director, Legislative Council, said because the Highway Patrol, one of the Governor's cabinet agencies, has submitted this request for Budget Section approval, it appears the Governor's office has reviewed the Supreme Court decision and determined it is appropriate for the Budget Section to consider this request. He said the request could be considered an acceptance or acknowledgment by the Governor of the authority of the Legislative Assembly to statutorily delegate this type of approval authority to the Budget Section.

In response to a question from Senator Wardner, Mr. Bjornson said the Highway Patrol may not purchase drones without the approval of the Legislative Assembly or if the Legislative Assembly is not in session, approval of the Budget Section.

In response to a question from Senator Erbele, Colonel Solberg said the Highway Patrol had vacancies in anticipation of budget reductions, which resulted in fewer equipment purchases than budgeted. He said these budget savings would be used to provide the \$45,000 cost to purchase the drones.

In response to a question from Representative Schatz, Colonel Solberg said the Highway Patrol trains agency staff for crash reconstruction and search and rescue operations and does not contract for these services.

In response to a question from Senator Mathern, Colonel Solberg said the Governor was aware of the Highway Patrol submitting this request for Budget Section approval to purchase drones.

It was moved by Representative Mock and seconded by Senator Oehlke that pursuant to Section 54-06-37, the Budget Section approve the Highway Patrol's request to purchase drones for crash reconstruction and search and rescue. Representatives Boehning, Holman, Mock, Monson, Nathe, and Sanford and Senators Dever, Erbele, Grabinger, Heckaman, Kilzer, Klein, Mathern, Oehlke, Sorvaag, and Wanzek voted "aye." Representatives Bellew, Brabandt, Brandenburg, Carlson, Delzer, Kempenich, Kreidt, Martinson, Meier,

Pollert, Schatz, Schmidt, and Vigesaa and Senators Bowman, Hogue, Holmberg, Lee, and Wardner voted "nay."
The motion failed.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

At the request of Chairman Bellew, the Legislative Council staff distributed a memorandum entitled [Federal Block Grants - 2019 Legislative Hearings](#), which provides information regarding block grant hearings required during the 2019 legislative session. The Legislative Council staff also distributed a concurrent resolution draft [19.3046.01000] authorizing the Budget Section to hold any legislative block grant hearings required during the 2019-21 biennium. He said the Legislative Council staff contacted state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings, and the survey revealed only one block grant with that requirement--the community services block grant administered by the Department of Commerce Division of Community Services. He said 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 hearings during the 2019 legislative session. He said the required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2019 legislative session.

It was moved by Representative Meier, seconded by Senator Mathern, and carried on a roll call vote that the resolution draft providing the Budget Section authority to hold public legislative hearings required for receipt of federal block grant funds during the period from the recess or adjournment of the 66th Legislative Assembly through September 30, 2021, be approved and recommended to the Legislative Management. Representatives Bellew, Boehning, Brabandt, Carlson, Delzer, Kempenich, Kreidt, Martinson, Meier, Mock, Monson, Nathe, Pollert, Sanford, Schatz, Schmidt, and Vigesaa and Senators Dever, Erbele, Grabinger, Heckaman, Holmberg, Kilzer, Klein, Lee, Mathern, Oehlke, Sorvaag, and Wardner voted "aye." Senators Bowman and Hogue voted "nay."

2018 NORTH DAKOTA FINANCE FACTS BROCHURE

At the request of Chairman Bellew, the Legislative Budget Analyst and Auditor presented the Legislative Council publication entitled [2018 North Dakota Finance Facts](#).

REPORT ON FEDERAL FUNDS

The Legislative Council staff presented a memorandum entitled [Analysis of Federal Funds for Bienniums Ending June 30, 2019, and June 30, 2021](#), which provides information regarding federal funds estimated to be received by state agencies during the 2017-19 and 2019-21 bienniums. He said agencies estimate \$3.8 billion of federal funds will be received during the 2017-19 biennium, \$77.6 million less than appropriated. He said agencies estimate \$3.8 billion of federal funds will be received during the 2019-21 biennium, \$88.0 million more than is estimated to be received during the 2017-19 biennium. He said of the 343 state programs in 38 state agencies receiving federal funding during the 2019-21 biennium, 167, or 49 percent, are subject to possible federal sequestration.

The Legislative Council staff presented a memorandum entitled [Largest Variances by Agency - 2017-19 Biennium - Federal Funds Appropriated and Federal Funds Estimated to be Received](#), which provides information regarding the major variances expedience by agencies during the 2017-19 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2019-21 biennium compared to the 2017-19 biennium.

BUDGET SECTION DUTIES

At the request of Chairman Bellew, Mr. Bjornson presented a memorandum entitled [Budget Section Duties - Effects of Supreme Court Decision](#). He said the memorandum provides a summary of how the North Dakota Supreme Court decision in *North Dakota Legislative Assembly v. Burgum* may affect the duties of the Budget Section. He said the court held the language in Section 5 of 2017 House Bill No. 1020 requiring Budget Section approval was an unconstitutional delegation of legislative authority. He said the ruling eliminates the State Water Commission's authority to transfer funds as designed in Section 5 and eliminates the authority of the Budget Section to approve these transfers. He said the court held the language in Section 5 of 2017 Senate Bill No. 2013 requiring Budget Section approval also was an unconstitutional delegation of legislative authority. He said the ruling allows the Department of Trust Lands to spend the entire \$3.6 million appropriation without approval from the Budget Section.

Mr. Bjornson said the court's opinion did not address other Budget Section duties and the impact of the opinion on future Budget Section operations is unclear. He said the court appeared to indicate the delegation of legislative functions to the Budget Section would be permissible if appropriate guidelines for Budget Section decisionmaking are provided. He said two of the Supreme Court justices raised the issue of separation of powers in their opinion, but three justices did not conclude Section 5 of 2017 House Bill No. 1020 and Section 5 of 2017 Senate Bill

No. 2013 violated the separation of powers provision in the state constitution. He said it appears the court's decision will permit delegations of legislative powers with proper guidelines, but it will be important for the Legislative Assembly to avoid delegating to the Budget Section any function that would be considered an executive branch function.

INFORMATION TECHNOLOGY DEPARTMENT INITIATIVES - CLOUD COMPUTING, SHARED SERVICES UNIFICATION, AND CYBERSECURITY

Mr. Shawn Riley, Chief Information Officer, Information Technology Department, presented information ([Appendix R](#)) regarding information technology initiatives and changes, including those relating to shared services, functional alignments, cloud computing, and cybersecurity; and current and future costs associated with each, contracts being entered, timeline for implementation, and any requests for legislative changes.

Mr. Riley said the shared services unification process includes four phases, including data gathering, transitional groupings, deep data analysis, and reporting. He said the Information Technology Department (ITD) is in the deep data analysis. He said ITD has identified 511 information technology full-time equivalent (FTE) positions, of which 344.30 FTEs are employees of ITD and 167 FTEs are from 12 Governor's Cabinet agencies. He said the salaries of the 167 Governor's cabinet information technology FTEs are funded \$5.6 million from the general fund, \$8.4 million from special funds, and \$4.6 million from federal funds. He said the salaries of the 344.30 ITD FTEs totals \$74.7 million, of which \$12.2 million is from the general fund and \$62.5 million is from special funds.

Mr. Riley said 93.8 percent of information technology staff identified have completed or are in the process of completing a start-stop-continue analysis. After 4 years of the unification plan being implemented, he said, ITD estimates a 15 to 22 percent increase in efficiency for information technology FTEs. He said the report phase includes providing information to the Legislative Assembly during the 2019 legislative session. He said legislative proposals will include budget requests relating to the new information technology shared services.

Mr. Riley said ITD has adopted a "cloud first" strategy. As new systems are being evaluated for deployment, he said, the cloud will be considered as the first option. He said 30 state agencies have more than 170 applications and systems in the cloud. He said agency systems will not be moved without involvement from the agency. He said current server costs for on-premise systems are \$29 per server per month, while the cloud server costs are estimated to be \$38 per server per month or \$30 per server per month for some systems. He said current storage costs for on-premise systems is \$160 per terabyte per month for premium storage and \$120 per terabyte per month for basic storage, while cloud storage costs are estimated to be \$80 per terabyte per month for premium storage. He said current network costs for on-premise systems are \$94,100 per month for legacy systems, while deploying systems in the cloud is estimated to cost \$89,800 per month. He said cloud-related expenditures will not change ITD rates charged to state agencies during the 2019-21 biennium. He said legislative action is not necessary to continue to move applications and systems to the cloud.

Mr. Riley said state and local governments, including K-12 schools and higher education institutions have experienced cybersecurity concerns. He said the information technology shared service has defended against 34 million vulnerability attacks, 3.3 million denial of service attacks, 88 million spam and phishing messages, and 1,300 zero-day attacks, for the period March 2018 through August 2018. He said North Dakota elementary and secondary schools have been targeted by North Korea and other nation states. He said more than one-third of North Dakota schools have been infected with double-pulsar malware. He said 1.4 percent of the state's budget is spent on cybersecurity, compared to a national state and local government average of 5.0 percent. He said ITD anticipates proposing legislation to the 2019 Legislative Assembly to address cybersecurity strategic, operational, and workforce initiatives.

INFORMATION TECHNOLOGY DEPARTMENT STATEWIDE INTEROPERABLE RADIO NETWORK

Mr. Duane Schell, Director, Network Services, Information Technology Department, presented information ([Appendix S](#)) regarding the status of the statewide interoperable radio network (SIRN) pursuant to Section 7 of 2017 House Bill No. 1178. He said the fiscal note for House Bill No. 1178 estimated \$9.6 million of revenue would be generated for SIRN during the 2017-19 biennium. He said the revenue estimate is \$7.5 million to \$8.0 million. He said the current revenue in the SIRN fund is \$4.0 million. He said expenditures incurred through August 2018 totaled \$49,975. He said ITD is in contract negotiations with a vendor for SIRN and intends to award the contract in December 2018. He said ITD does not anticipate borrowing funds from the Bank of North Dakota for SIRN during the 2017-19 biennium.

DEPARTMENT OF COMMERCE - RENAISSANCE FUND ORGANIZATIONS ANNUAL REPORT AND REDUCTION IN FORCE

Renaissance Fund Organizations

Ms. Rikki Roehrich, Program Administrator, Department of Commerce, presented information ([Appendix T](#)) regarding annual audits of renaissance fund organizations pursuant to Section 40-63-07(9). She said the purpose of a renaissance fund organization (RFO) is to raise funds to be used to finance projects located in designated renaissance zones. She said there are 58 cities that have a renaissance zone. Of those cities, she said, eight have established an RFO, including Casselton, Fargo, Jamestown, Hazen, Mayville, West Fargo, Hope, and Grand Forks. She said Fargo has established two renaissance zones, but only one is an active RFO. She said Mayville, Hazen, and Hope manage their city's RFO, while other city RFOs are managed by private entities. She said the Legislative Assembly has approved \$10.5 million in tax credits for RFO projects since 1999. She said \$11,296,732 has been invested in RFOs during this time and \$5,648,366 of credits has been claimed. Of the \$4,851,634 of credits available, she said, \$1.2 million has been reserved for the Grand Forks RFO, \$2 million for the Fargo RFO, \$465,000 for the Hope RFO, and \$15,000 for the Mayville RFO.

Reduction in Force

Mr. Shawn Kessel, Deputy Director, Department of Commerce, presented information ([Appendix U](#)) regarding the department's May 2018 reduction in force, including the amount of salary savings and how the savings will be used during the 2017-19 and 2019-21 bienniums. He said on May 24, 2018, the department reduced staff by 13 FTEs. He said the department intends to use cost-savings from the reduction in force to hire specialists in new roles to focus on new department priorities, including the commercialization of intellectual property, the establishment of an intermodal site in North Dakota, and elevating North Dakota's image and brand.

Mr. Kessel said while the Governor's guidelines would reduce the department's FTEs to 63.40 for the 2019-21 biennium, the department will request 61.80 FTEs, a reduction of 4.60 FTEs from the 66.40 FTEs authorized for the 2017-19 biennium. He said the department estimates the reduction in force will result in cost-savings of \$218,705 during the 2017-19 biennium. He said the estimated cost-savings during the 2019-21 biennium is \$266,497, which includes salaries and benefits savings and reduced rent costs as the department will reduce the amount of office space rented from Workforce Safety and Insurance.

STATE TREASURER - OUTSTANDING WARRANTS AND CHECKS

Mr. Ryan Skor, Director of Finance, Office of the State Treasurer, presented information ([Appendix V](#)) regarding warrants and checks outstanding for more than 90 days and less than 3 years pursuant to Section 54-11-01. He said the total dollar amount of outstanding checks increased by 9.8 percent from fiscal year 2017 to fiscal year 2018. He said 4,293 checks totaling \$409,647 issued in fiscal year 2015 will be transferred to Unclaimed Property in October 2018. As of September 2018, he said, there are 18,114 outstanding checks totaling \$5.2 million issued during fiscal years 2016, 2017, and 2018.

ATTORNEY GENERAL - LITIGATION-RELATED EXPENDITURES

Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office, presented information ([Appendix W](#)) 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 September 12, 2018, he said, the Attorney General's office has spent \$2,029,177 on eight lawsuits from the litigation fund for litigation-related expenditures, of which \$1,170,865 was spent during the 2015-17 biennium and \$858,474 was spent during the 2017-19 biennium.

STATE FIRE MARSHAL EXPENDITURES

Mr. Douglas D. Nelson, State Fire Marshal, Attorney General's office, presented information ([Appendix X](#)) regarding expenditures by certified fire departments and district funds received from the insurance tax distribution fund and reserve fund balances for 2017 and any information available for 2018 pursuant to Section 18-04-02. He said on or before October 31 of each year a fire department must file a certificate of existence to the State Fire Marshal. He said funds distributed from the insurance tax distribution fund help communities maintain fire services with equipment, operations, buildings, vehicles, and other necessities.

Mr. Nelson said \$544,267,885 in premiums was obtained from 19,450 entities in fiscal year 2016 and disbursed in fiscal year 2017. As of October 31, 2017, he said, 371 fire departments received \$7,279,218 and spent \$6,519,561. He said remaining funds total \$615,086, of which \$73,008 is uncommitted. He said \$544,267,885 in premiums were obtained from 19,375 entities in fiscal year 2017. He said the amount of funds spent in fiscal year 2018 is not available, because certificates of existence were issued in August 2018 and are due to the State Fire Marshal's office by October 31, 2018.

GAME AND FISH DEPARTMENT - LAND ACQUISITIONS AND MITIGATION PROGRAM

Mr. Scott Peterson, Deputy Director, Game and Fish Department, presented information ([Appendix Y](#)) regarding land acquisitions used for Department of Transportation (DOT) mitigation purposes and options to make more Game and Fish Department lands available for this purpose. He said an interagency guidance document was implemented in 2010 to provide a set of procedures to assist agencies in mitigating unavoidable wetland losses. He said the Game and Fish Department controls and manages wildlife management areas (WMAs). He said WMAs consist of lands either owned or leased and operated by the Game and Fish Department, totaling approximately 219,000 acres. He said the land is managed for the development and enhancement of habitat to maximize wildlife production and public hunting, fishing, trapping, and wildlife-viewing opportunities. He said the Game and Fish Department does not actively pursue acquisitions, instead relying on offers from landowners willing to sell land. He said the department's budget includes \$800,000 for these land acquisitions.

Mr. Peterson said because the development of wildlife habitat, including wetlands, on WMAs is a primary function of the Game and Fish Department, almost all available wetland restoration or creation opportunities have been restored. He said if the Game and Fish Department reviews an acquisition offer that appears to meet DOT mitigation needs, the Game and Fish Department contacts DOT. He said DOT may purchase the property, restore wetlands, receive wetland mitigation credits, then enter an agreement with the Game and Fish Department for the long-term management of the property. He said both departments will continue to work together in the future and evaluate land acquisitions on a case-by-case basis.

In response to a question from Senator Erbele, Mr. Peterson said there are several categories of mitigation that result in the award of mitigation credits. He said one mitigation credit is awarded for each acre of wetlands restored and one mitigation credit for each acre of wetlands created. He said if certain wetland enhancement parameters are met, one mitigation credit is awarded for every 20 wetland acres enhanced.

DEPARTMENT OF TRANSPORTATION - DEPARTMENT FEES

Mr. Mark Nelson, Deputy Director, Department of Transportation, presented information ([Appendix Z](#)) regarding a report on fees charged by the department in comparison to the actual cost of providing the services for which the fee is charged pursuant to Section 13 of 2017 Senate Bill No. 2012. He said driver's license fees are currently \$15 and are valid for 6 years. He said driver's license fees were last increased in 1987. He said motor vehicle fees vary by age and weight of the vehicles being licensed and were last increased in 2005. He said revenue collected from driver's license fees are deposited in the state highway fund. During the 2015-17 biennium, he said, driver's license fees collected totaled \$8.4 million and driver's license expenditures totaled \$13.4 million.

Mr. Nelson said revenue collected from motor vehicle fee collections are deposited in the highway tax distribution fund. During the 2017-19 biennium, he said, approximately \$24.8 million in motor vehicle fee collections will be spent for expenditures of the Motor Vehicle Division. He said approximately 1 million vehicles are registered in the state. He said for every dollar the license registration fees are increased, approximately \$1 million of additional fee revenue would be available for distribution from the highway tax distribution fund for transportation needs.

In response to a question from Representative Nathe, Mr. Nelson said customers are charged \$5 for license plates. He said the cost of the plates is \$5.95.

In response to a question from Senator Oehlke, Mr. Nelson said if Initiated Constitutional Measure No. 4 relating to personalized vehicle plates for volunteer emergency responders is approved in the November 2018 general election, the estimated revenue loss to the department and political subdivisions would be approximately \$13.9 million over a 10-year period.

DEPARTMENT OF CORRECTIONS AND REHABILITATION - INMATE REPORT

Mr. Dave Krabbenhoft, Director of Administration, Department of Corrections and Rehabilitation, presented information ([Appendix AA](#)) regarding the department's prison population management plan, inmate admissions, and the number of inmates the department has not admitted after sentencing pursuant to Section 54-23.3-11. To date, he said, the department has not refused the admission of any inmates. He said prioritization of inmate admissions would begin in the month following the month in which the average daily inmate population exceeds maximum operational capacity. He said the maximum operational capacity for male inmates is 1,624 and the maximum operational capacity for female inmates is 224. As of August 31, 2018, he said the average daily inmate population for males was 1,546 and the average daily inmate population for females was 206. He said the number of inmate admissions from July 1, 2017, to August 31, 2018, was 1,446 males and 347 females.

DEPARTMENT OF HUMAN SERVICES - TRANSFERS

Mr. Tom Solberg, Deputy Director, Department of Human Services, presented information ([Appendix BB](#)) regarding a report on any department transfers in excess of \$50,000 made during the 2017-19 biennium between line items in each subdivision and line item transfers made between subdivisions pursuant to Section 4 of 2017 House Bill No. 1012. As of September 13, 2018, he said, two transfers totaling \$363,251 were made from the Management Division to the Program and Policy Division for salaries and wages. He said one transfer for \$1,445,157 was made from the Program and Policy Division to the Management Division for operating expenses. He said five transfers totaling \$6,197,530 were made between the salaries and wages, operating expenses, and grants line items of the Program and Policy Division.

THREE AFFILIATED TRIBES EXPENDITURES

Mr. Roger White Owl, Intergovernmental Affairs Officer, Three Affiliated Tribes of the Fort Berthold Reservation, provided information ([Appendix CC](#)) regarding fees, expenses, and charges the tribe imposes on the oil industry and essential infrastructure projects (and each project's cost) completed by the Three Affiliated Tribes of the Fort Berthold Reservation using oil and gas tax receipts pursuant to Section 57-51.2-02. He said fiscal year 2017 tax revenues totaled \$130.6 million, including gross production tax of \$66.3 million and oil extraction tax of \$64.3 million. He said fiscal year 2018 revenues totaled \$181.8 million, including gross production tax of \$91.9 million and oil extraction tax of \$89.9 million. In fiscal year 2017, he said, the west portion of Route 12 was repaired. In fiscal year 2018, he said, the Four Bears segment of Route 2, the south segment of Route 22, and west segment of Route 15 were repaired.

No further business appearing, Chairman Bellew adjourned the meeting at 2:00 p.m.

Levi Kinnischtzke
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:29