

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

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



**SIXTY-EIGHTH LEGISLATIVE ASSEMBLY  
2023**

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January 3, 2023

Honorable Doug Burgum  
Governor of North Dakota

Members, 68<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 proposing the closure of the Public Employees Retirement System main system defined benefit plan for new hires and routing of new hires into the defined contribution plan as well as providing continued and one-time funding of the unfunded liability of the main system defined benefit plan; repealing the statutory Workers' Compensation Review Committee; establishing a community health worker task force; creating a cross-disability advisory council; providing funding for various student financial aid programs; and providing funding for the higher education capital building fund.

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

Respectfully submitted,

Representative Robin Weisz  
Chairman  
North Dakota Legislative Management

RW/HD

# **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 the prevailing war conditions prevented the employment of a Research Director until April 1946.

After a Research Director was hired, the first LRC held monthly meetings before the 1947 legislative session and recommended a number of bills to that session. All the interim work was performed by the 11 statutory members, even though the legislation creating the LRC permitted the appointment of subcommittees, until the 1953-54 interim, when other legislators participated in studies. Although the LCR was titled as a research agency, the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations in its early years. This screening role was apparent in 1949 when 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 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, the Legislative Council refers specifically to the staff functioning as the legislative service agency, while the Legislative Management refers to the oversight committee of legislators. Although research remains an integral part of the function of the Legislative Council, the agency 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, which vary in staff size and functional responsibilities. Legislative service agencies provide legislators with the tools and resources necessary to fulfill their legislative duties. Before the creation of a legislative service agency, the Legislative Assembly received information, studies, or investigations from outside sources and some of the information was inadequate or slanted due to the special interests of the sources.

The Legislative Assembly established the North Dakota Legislative Council to fulfill its need for objective, reliable information and staff services. The Legislative Council assists members of the Legislative Assembly in meeting the demands of a part-time citizen legislature.

## **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 6 Senators and 6 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 2 members on the Legislative Management.

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

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

Much of the work completed during the interim originates from studies contained in resolutions and bills passed by both houses. However, the Legislative Management has the authority to initiate studies or other action deemed necessary between legislative sessions. The Legislative Management generally designates interim committees to carry out the studies; however, 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 of interim committees, with the exception of a few members appointed as provided by statute, regardless of the manner in which interim committees are formed. Nearly all committees consist entirely of legislators, although citizen members occasionally 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 Legislative Council staff provides the vast majority of services required to complete studies during the interim.

Interim committee chairmen deliver reports to the full Legislative Management in November preceding a regular legislative session. All current legislators, as well as newly elected legislators, are invited to attend the November meeting. 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 the recommendations, to the Legislative Assembly.

The Legislative Council staff provides a wide range of services to legislators, other state agencies, and the public in addition to conducting studies. Legislative Council attorneys provide legal advice and counsel on legislative matters and bill drafting services for 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 staff includes a Legislative Budget Analyst and Auditor and 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 committee meetings and 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 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**

Since 1945, nearly every facet of state government and statutes has been touched by one or more Legislative Management studies. 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. Related studies have addressed 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 studied.

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

A major function of interim committees includes pioneering in new and untried areas. 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. An interim committee also was tasked with closing the constitutional institution of higher education at Ellendale 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 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 are the Budget Section, which receives the executive budget in December before each legislative session, and the Administrative Rules Committee, which 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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# ACUTE PSYCHIATRIC TREATMENT COMMITTEE

Section 5 of House Bill No. 1012 (2021) created the Acute Psychiatric Treatment Committee consisting of eight members to study the acute psychiatric hospitalization and related step-down residential treatment and support needs of individuals with mental illness. The Legislative Management assigned the committee three additional studies:

- Section 2 of Senate Bill No. 2161 (2021) directed a study regarding the implementation of expanded behavioral health services, including the implementation of the Medicaid 1915(i) state plan amendment, capacity and utilization of the State Hospital, a behavioral health bed management system, and implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by the Human Services Research Institute (HSRI).
- House Bill No. 1470 (2021) directed a study regarding behavioral health needs of incarcerated adults. The study was to consider the behavioral health needs of incarcerated adults, including access, availability, and delivery of services. The study also was to include input from stakeholders, including representatives of law enforcement, social and clinical service providers, educators, medical providers, mental health advocacy organizations, emergency medical service providers, tribal government, state and local agencies and institutions, and family members.
- Senate Bill No. 2336 (2021) directed a study regarding the occupational boards that address mental health and behavioral health issues which may include the State Board of Psychologist Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, Education Standards and Practices Board, North Dakota Board of Social Work Examiners, and North Dakota Marriage and Family Therapy Licensure Board. The study was to include a review of the rules adopted by the boards and consideration of the frequency with which the rules are reviewed, whether there are barriers to practice and barriers to admission of foreign practitioners, and whether there is adequate training for board members and executive directors of these boards.

Committee members were Representatives Jon O. Nelson (Chairman), Emily O'Brien, Randy A. Schobinger, and Michelle Strinden and Senators Kyle Davison, Dick Dever, Kathy Hogan, and Tim Mathern.

## ACUTE PSYCHIATRIC HOSPITALIZATION AND RESIDENTIAL CARE STUDY

### Background

Section 5 of House Bill No. 1012 directed a study of the acute psychiatric hospitalization and related step-down residential treatment and support needs of individuals with mental illness. The committee was required to gather input from stakeholders and other groups, including private hospitals, the Department of Health and Human Services (DHHS), and mental health advocates. The study was to include the review of options for a long-term plan for acute psychiatric hospitalization and related step-down residential treatment and support needs in the state and short-term options during the next 2 bienniums to contract with private provider acute psychiatric care facilities to provide treatment services in four or more cities in the state, workforce needs of such specific locations, and options to replace the existing State Hospital facility with one or more treatment facilities focused on forensic psychiatric evaluation and treatment.

The committee, with the approval of the Legislative Management, was allowed to obtain consulting services to determine the total number of acute care beds needed in the state and to develop recommendations for private provider contracts, treatment requirements and outcome measures, locations in the state, including private and public facilities, and the future use of facilities at the State Hospital campus, including the LaHaug Building. The study provided consulting services also may include the development of conceptual drawings for recommendations for a new State Hospital. The 2021 Legislative Assembly appropriated one-time funding of \$500,000 from the general fund to the Legislative Council for consulting services of the study.

The Department of Health and Human Services was required to provide to the consultants and the committee a complete description of other outpatient and inpatient private and public behavioral health services, including substance use disorder (SUD) facilities existing in the state to prevent acute behavioral health hospitalization and to support patients following discharge from psychiatric hospitalization and related residential care. The department was required to seek Medicaid plan amendments or Medicaid waivers to allow federal funding reimbursement for services provided in institutions for mental diseases (IMD) to Medicaid beneficiaries between the ages of 21 and 64.

### State Hospital

#### Background

The State Hospital was first authorized in 1883, opened in May 1885, and is located on the south side of Jamestown. The State Hospital is referenced in Section 12 of Article IX of the Constitution of North Dakota. It provides psychiatric and chemical dependency treatment to residents of the state. North Dakota Century Code Chapter 25-02 contains

various provisions related to the hospital, including Section 25-02-01, which provides an institution for the care of the mentally ill must be maintained in Jamestown, the institution must be known as the State Hospital, and is to be administered and controlled by DHHS.

Section 25-02-03 provides the State Hospital is an IMD serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism. The State Hospital is one component of the North Dakota mental health delivery system and serves as a resource to community-based treatment programs. The State Hospital, pursuant to rules adopted by DHHS, receives and cares for all persons with mental illness, including persons suffering from drug addiction or alcoholism, residing within the state, and is required to furnish to those persons all needed food, shelter, treatment, and support necessary to restore their mental health or to alleviate their illness or suffering.

### Services

The State Hospital provides short-term acute inpatient psychiatric and substance abuse treatment, intermediate psychosocial rehabilitation services, forensic services, and safety net services for adults. Clinical services include psychiatry, psychology, nursing, social work, addiction counseling, chaplaincy, education, occupational therapy, therapeutic reaction, and vocational rehabilitation services. Treatment is provided for individuals with serious mental illness or chemical dependency diagnoses. Inpatient evaluation and treatment services are provided for sexually dangerous individuals. The Adult Psychiatric Services Unit provides services for patients age 18 and older who have a primary diagnosis of serious mental illness. Inpatient services include short-term stabilization, trauma program, geropsychiatric services, and psychosocial rehabilitation services.

### Facilities

The following is a summary of buildings located on the State Hospital campus:

Buildings	Use	Year Built	Square Footage	Percentage Used
Electrical substation	Main electrical substation for campus, houses, and backup generator	1984	1,800	100%
Powerhouse	Centralized power plant and smokestack	1914	39,285	100%
Sewage lift station	Sanitary sewer lift station to connect to city water	2012	800	100%
Grounds shop	Equipment storage	1956	3,200	100%
Vehicle maintenance shop	Equipment repair	1949	4,550	100%
Therapeutic pool	All hospital therapeutic exercise	1967	6,800	100%
LaHaug	Inpatient services	1984	143,127	90%
Gronewald-Middleton	Residential sex offender treatment	1956	82,670	60%
New Horizons	Residential SUD services and inpatient treatment	1968	75,485	75%
Cottages (7)	Residential services, student housing, and storm accommodations	1954	21,000	75%
Learning Resource Center	Patient services, staff offices, and cafe	1916	75,485	75%
Greenhouse	Patient services and treatment space	1997	3,000	25%
16 West	Plant services, offices, and storage	1930	39,990	50%
Superintendent cottage	Storm sleeping rooms and event space	1917	5,552	20%
Pedestrian tunnels	Pedestrian traffic and dietary delivery	N/A	24,832	60%
Garages	Storage	1988	1,360	25%
Grounds warehouse	Supply storage	1917	2,755	25%
Warehouse 1	Storage	1929	6,020	10%
Warehouse 2	Plumbing and electrical storage	1925	23,414	10%
Grounds implement shed	Large equipment storage	1926	5,370	20%
Quonset	Plant equipment storage	1965	3,130	25%
Administration building <sup>1</sup>	N/A	1916	24,675	0%
Water tower	N/A	N/A	N/A	0%
Water pressure pump house	N/A	1958	4,802	0%
Chapel <sup>1</sup>	N/A	1961	13,140	0%
Water treatment	N/A	1958	4,802	0%
Employee building <sup>1</sup>	N/A	1952	34,345	0%

<sup>1</sup>Section 17 of House Bill No. 1012 (2021) authorized DHHS to demolish the administration building, chapel, employee building, and associated tunnels during the 2021-23 biennium.

### LaHaug Building

The LaHaug Building, built in 1984, is a 143,127 square foot facility on the State Hospital campus used for the treatment of adults who receive psychiatric and substance abuse services. The building is the newest on the State Hospital campus. The building contains the State Hospital clinic, pharmacy, laboratory, x-ray, staff offices, and recreational and treatment areas.

## **Residential Treatment Facilities**

Psychiatric residential treatment facilities provide children and adolescents with therapeutic services, integrating group living, educational services, and a clinical program based on a clinical assessment and individual treatment plan that meets the needs of the child and family. The facilities are available to children in need of active psychotherapeutic intervention who cannot be treated effectively in their home, another home, or a less restrictive setting. North Dakota residential treatment providers include:

- Dakota Boys and Girls Ranch - Bismarck, Fargo, and Minot
- Nexus-PATH Family Healing - Fargo
- Pride Manchester House - Bismarck
- Ruth Meiers Adolescent Center - Grand Forks

## **Department of Health and Human Services Testimony**

### **State Hospital**

The committee received testimony from representatives of DHHS regarding inpatient and outpatient private and public behavioral health services, including SUD facilities in the state available to prevent acute behavioral health hospitalization and to support patients following discharge from psychiatric hospitalization and related residential care. The testimony indicated:

- Crisis services are available within 45 miles of the eight largest cities in North Dakota.
- There is a pilot project in place with a critical access hospital to provide crisis services remotely.
- If the pilot project is successful, each of the 32 critical access hospitals in the state could have a service area of 45 miles surrounding the hospital, resulting in more critical service coverage in the state.
- While crisis services are nearly fully staffed, certain human service centers have experienced difficulty recruiting physicians.
- While agreements may be possible with North Dakota hospital facilities and other states' hospital facilities, there may be licensing restraints for physicians attempting to practice outside North Dakota.
- Crisis intervention services and services offered by human service centers are available to children, adolescences, and adults.

The committee received testimony from representatives of DHHS regarding behavioral health services available at the State Hospital, including residential SUD treatment, residential sexual offender treatment, residential transitional living, outpatient SUD treatment, outpatient adult forensic assessments, outpatient youth forensic assessments, and outpatient restoration treatment. The testimony indicated:

- The State Hospital serves 1,000 to 1,200 patients a year.
- The State Hospital has 100 inpatient acute psychiatric beds but 25 beds were closed due to the Coronavirus (COVID-19) pandemic to establish an isolation area for residents who test positive for COVID-19.
- Of the 73 inpatient beds filled at the State Hospital in October 2021, 24 beds were for rehabilitation patients, 22 beds were for geropsychiatric patients, 16 beds were for acute psychiatric patients, 7 beds were for restore-to-competency patients, and 4 beds were for jail patients.
- Of the 51 residential beds filled at the State Hospital in October 2021, 30 beds were for sex offender patients, 13 beds were for SUD patients, and 8 beds were for transitional living patients.
- On average, patients at the State Hospital are referred for admission from private hospitals (41 percent), local admissions primarily emergency room referrals from Jamestown and Devils Lake (24 percent), residential SUD programs (17 percent), jails for psychological evaluation (12 percent), and forensic referrals for assessment of criminal responsibility and sex offenses (6 percent).
- The State Hospital receives patients needing inpatient acute psychiatric hospitalization services primarily from Cass, Burleigh, Williams, and Grand Forks Counties.

The committee received testimony from representatives of DHHS regarding facilities on the State Hospital campus. The testimony indicated:

- The estimated combined deferred maintenance expense of buildings on the State Hospital grounds is approximately \$51.23 million in the near future and \$148 million in total.

- 76 percent of mechanical, electrical, plumbing, and structural systems have deteriorated and have exceeded their useful life expectancy.
- Future capacity and utilization needs of the State Hospital include screening for all State Hospital admissions, expansion of community services, expansion of intensive community treatment services, development of a statewide crisis system, expansion of SUD residential services, contracts for local private hospital beds, geropsychiatric skilled nursing facilities, and teleforensic assessments.
- Three options for the future of the State Hospital have been developed by DHHS, including the construction of a new State Hospital facility, renovating the LaHaug Building and New Horizons Building, and renovating all patient areas of the State Hospital.
- DHHS supports the construction of a new State Hospital facility, which would improve patient outcomes, improve patient and staff safety, create operational efficiencies, and remove the need for 40 full-time equivalent (FTE) State Hospital positions.
- While the child and adolescent unit at the State Hospital supported 8 beds prior to its closure, if those services were reinstated, the State Hospital would request a 12-bed unit.

### **Medicaid State Plan Amendments**

The committee received testimony from representatives of DHHS regarding progress in seeking Medicaid plan amendments or Medicaid waivers to allow federal funding reimbursement for services provided in IMDs to Medicaid beneficiaries between the ages of 21 and 64. The testimony indicated:

- Four facilities are classified as IMDs in North Dakota and have a combined 373 beds, including the State Hospital in Jamestown (140 beds), Prairie St. John's Hospital in Fargo (110 beds), Sharehouse in Fargo (87 beds), and Summit Prairie Recovery Center in Raleigh (36 beds).
- Section 1115 of the Social Security Act gives the Secretary of the United States Department of Health and Human Services authority to approve experimental, pilot, or demonstration projects that promote the objectives of Medicaid and the children's health insurance program. Under this authority, the Secretary may waive certain provisions of Medicaid law to give states additional flexibility to design and improve programs.
- Some states have received approval from the United States Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) for Section 1115 waivers related to SUD treatment services provided in IMDs.
- In November 2018, CMS clarified Section 1115 waivers may be approved for services provided in IMDs that focus primarily on treatment for individuals with serious mental illness or serious emotional disturbance.
- Based on conversations with other states, it may cost \$3.5 million and require 5 FTE positions to complete the Section 1115 waiver process within the next 3 to 5 years. However, the cost may increase if additional system work is needed or rates need to be adjusted.
- As of September 2021, 49 states, as well as the District of Columbia and Puerto Rico, have applied for at least one Section 1115 waiver, resulting in a total of 153 waiver applications. Of these states, 36 have had a waiver application approved by the Secretary of the United States Department of Health and Human Services which is currently active.
- North Dakota has not submitted a Section 1115 waiver application.

### **Request for Proposal and Consultant Selection**

The committee, with Legislative Management Chairman approval, issued a request for proposal (RFP) in August 2021 to hire a consultant to provide information and recommendations related to the Acute Psychiatric Treatment Committee's study of acute psychiatric and residential care needs in the state.

Two organizations, Renee Schulte Consulting, LLC, and Schafer Consulting, Inc., submitted proposals in response to the committee's RFP. In September 2021, the committee heard proposals from the organizations and selected Renee Schulte Consulting, LLC. The Chairman of Legislative Management approved a contract with Renee Schulte Consulting, LLC, which provided Renee Schulte Consulting, LLC, be paid \$247,000 to assist the committee in its study and provide recommendations by April 2022 on the following:

1. Development of options and a recommendation for a long-term plan for acute psychiatric hospitalization and related step-down residential treatment and support needs in the state, including:
  - a. The number of acute care beds needed in the state;
  - b. Appropriate locations in the state for treatment and support services, considering workforce availability;

- c. The involvement of private providers, including contract requirements, treatment requirements, and outcome measurers; and
  - d. The use of existing public facilities and the need for new public facilities, including options to replace the existing State Hospital facility with one or more treatment facilities focused on forensic psychiatric evaluation and treatment.
2. Development of options and a recommendation for a short-term plan for the remainder of the 2021-23 biennium and the 2023-25 biennium to contract with private acute psychiatric care facilities to provide appropriate treatment services in four or more cities in the state.
  3. Development of options and a recommendation for the future use of facilities at the State Hospital, including the LaHaug Building.

### **Renee Schulte Consulting, LLC**

The committee received testimony from Renee Schulte Consulting, LLC, regarding the organization's methodology of collecting information to assist the committee in its study, which included:

- Conducting interviews with private providers to determine the number of acute psychiatric hospitalization beds needed in the state, why private hospitals have chosen not to offer acute psychiatric hospitalization services, and if the barriers to offering those services are financial-, risk-, or space-based.
- Obtaining acute psychiatric hospitalization and behavioral health utilization data from private providers and DHHS for Medicaid and non-Medicaid patients to attempt to quantify the number of uninsured patients in need of these services.
- Using information from previous North Dakota behavioral health studies to discover solutions for problems and concerns related to the committee's study while not recreating previous studies.

The committee received the final report from Renee Schulte Consulting, LLC, on April 28, 2022. The final report included the following recommendations relating to acute psychiatric hospitalization and related step-down and residential treatment and support needs:

<b>Recommendation</b>	<b>Implementation Process</b>	<b>Priority Level</b>
<b>Short-Term Plan - 2021-23 Biennium</b>		
1. Draft a proposal to build a modern 75- to 85-bed State Hospital	Direct DHHS to develop a plan with estimated costs	High
2. Draft a proposal to allow the Department of Corrections and Rehabilitation (DOCR) to renovate and utilize the LaHaug building	Direct DOCR to develop a plan with estimated costs	Medium
3. Develop regulations to fund acute psychiatric services and beds in critical access hospitals, most notably in Jamestown, Devils Lake, Minot, Dickinson, and Williston	Legislation needed	High
4. Amend North Dakota Administrative Code Chapter 33-07-01.1 so emergency psychiatric treatment and behavioral health services can be provided in emergency departments in all hospitals	Administrative rule change	High
5. Continue and increase use of coordinated care agreements between DHHS and the federal Indian Health Services (IHS) and other cultural affair organizations	Direct DHHS to pursue and develop an action plan	High
6. Evaluate the children and adolescent admission and transfer process from hospitals to residential facilities	Direct DHHS to conduct a functional process audit	High
7. Codify the purpose of the State Hospital and human service centers to clarify the State Hospital care for all mentally ill individuals	Legislation needed	High
8. Improve accountability in hospital and provider contracts, including requiring "no eject" and "no reject" language related to patient discharges be included in all contracts	Direct DHHS to require providers to adhere to all Medicaid guidelines and regularly report data and predetermined outcome measures established in DHHS regulations	
9. Define mental health levels of care similar to how SUD levels of care are defined	Administrative rule change	High

Recommendation	Implementation Process	Priority Level
10. Fund an implementation team consisting of 3 to 5 individuals to implement the report recommendations	Appropriation needed	High
11. Improve communications and collaboration between DHHS, IHS, and providers	Direct DHHS to pursue and develop an action plan	High
12. Maximize use of full service telepsychiatry throughout the state and ensure parity with in-person psychiatry services	Legislation needed	High
<b>Long-Term Plan - 2023-25 Biennium</b>		
13. Build a modern State Hospital	Appropriation needed	High
14. Provide funding for renovations to the LaHaug Building	Appropriation needed	Medium
15. Demolish unused State Hospital buildings	Appropriation needed	Medium
16. Conduct a state fiscal audit on the State Hospital and human service centers	Direct the State Auditor to conduct an audit	High
17. Assign a cultural liaison between minority population groups and human service centers, DHHS, and health care stakeholders	Appropriation needed	High
18. Require state-administered licensing boards rather than volunteer-led licensing boards to standardize board administrative processes and increase efficiencies	Legislation needed	Medium
19. Codify universal licensing recognition for each behavioral health profession to promote easy relocation of licensed professionals	Legislation needed	Medium
20. Codify a composite licensing board for family therapists, counselors, and addiction counselors to provide consistent regulatory oversight, streamline processes, and remove barriers to interprofessional services	Legislation needed	Medium

Recommendations included in the Renee Schulte Consulting, LLC, final report related to behavioral health workforce include:

- Coordinating or reorganizing local administrative workforce groups.
- Developing standardized minimum data expectations when collecting primary health and behavioral health workforce data.
- Supporting integration of human service center and behavioral health professional degree program missions.
- Providing a grant fund similar to Minnesota's medical education and research costs fund to allow behavioral health care facilities to be reimbursed for supervisor teaching and training costs of behavioral health program students.
- Providing matching funds from the state or seeking private matching funds for federally supported behavioral health training and professional service programs for underserved areas and for children and adolescents.
- Supporting the State Board of Psychologist Examiners' participation in the psychology interjurisdictional compact, also known as PSYPACT.

Recommendations included in the Renee Schulte Consulting, LLC, final report related to behavioral health workforce loan repayment programs include removing loan repayment program restrictions that limit supervisory or administration time for teaching and training, adding loan repayment program hour and location flexibility, allowing students to apply for loan repayment programs and receive program approval contingent upon licensure, and increasing state funded loan repayment programs for behavioral health professionals with priority for areas of the state in most need.

The committee received testimony from Renee Schulte Consulting, LLC, regarding conclusions reached while compiling the recommendations related to acute psychiatric hospitalization and related step-down residential treatment and support needs in the state. The testimony indicated:

- Behavioral health data collection was a challenge and an evaluation should be considered regarding the type of behavioral health data collected and the agency responsible to collect it. It was suggested North Dakota research universities may be appropriate entities to collect behavioral health data and the North Dakota Health Information Network may be an appropriate system to store the data.



- The COVID-19 pandemic caused a reduction in the number of open acute psychiatric beds and increased difficulty for providers to maintain an appropriate number of staff for each bed.
- The COVID-19 pandemic caused slower court actions and a reduction in the availability of acute psychiatric beds at the State Hospital, resulting in an increase in mentally ill individuals being housed in jails.
- Crisis systems will not be successful unless the state and private providers have strong relationships with law enforcement and jail systems.
- The closing of private provider acute psychiatric beds in multiple areas of the state has reduced the levels of care available to children and adults.
- Providers often are slow to implement use of the Medicaid 1915(i) waiver.
- Incorrect World Health Organization Disability Assessment Schedule (WHODAS) scores have made fewer individuals eligible for care.
- Multiple levels of care in the state are not functioning properly, resulting in individuals receiving care in levels they often do not belong and because there is a lack of appropriate followup care facilities, these individuals are not discharged, resulting in new patients waiting for beds.
- Of the 3,323 total hospital beds in the state, 244 are adult acute psychiatric beds, which is considered adequate for North Dakota's population; however, the beds are not in the correct locations, are being shared with out-of-state patients, or are not being used correctly as problems related to improper levels of care, payment for each level of care, procedures to access each level, and inappropriate discharging of acute care patients are present throughout the state.
- Critical access hospitals, not the State Hospital, should provide short-term acute psychiatric services to the Jamestown and Devils Lake regions so the State Hospital can focus on treating patients with the greatest intensity and complexity of need.
- The State Hospital should focus on forensic evaluations of acute psychiatric patients and sex offenders, individuals referred by the courts for psychological evaluation, and individuals with complex needs.
- The State Hospital should not provide residential SUD services.
- Recommended levels of care at the human service centers include assessment and evaluation, case management, mobile crisis, crisis stabilization, and crisis residential services.
- The final report does not include information regarding whether the state should pursue an IMD waiver because the state should focus on requiring providers to use Medicaid when possible and further evaluate the use of the newly implemented Medicaid 1915(i) state plan amendment, then consider the need for an IMD waiver.

### **Department of Health and Human Services Response to Consultant Recommendations**

The committee received testimony from DHHS in response to recommendations included in the Renee Schulte Consulting, LLC, final report. The testimony indicated DHHS:

- Supports the recommendation to build a new state hospital with 75 to 85 beds for adult services and will work with local providers in the Jamestown and Devils Lake regions to provide short-term acute psychiatric services to citizens rather than the State Hospital.
- Will continue to partner with critical access hospitals as crisis stabilization services are expanded.
- Supports recommendations to increase tribal care assessment and capacity coordination with private providers.
- Believes a collaborative workgroup should be established to address recommendations related to geropsychiatric services.
- Supports the recommendation to increase residential SUD treatment program capacity rather than those services being provided at the State Hospital and will suggest changes to administrative rules to address this recommendation.
- Supports recommendations to update statutory references regarding definitions and the purpose of the State Hospital and human service centers.
- Requested examples of no eject/no reject contract language from Renee Schulte Consulting, LLC, and have reviewed those examples.
- Agrees with data management recommendations and could provide proposals to identify investments in infrastructure to increase capacity for data collection, management, and analysis.

- Agrees with recommendations to increase financial accountability and transparency and requests these efforts be led by an individual or organization with health care expertise so operational efficiencies are the primary focus, rather than a financial audit.
- Supports the recommendation to encourage all public and private providers to use Medicaid when possible and has encouraged the use of Medicaid through the Medicaid 1915(i) state plan amendment.
- Agrees with the recommendation to codify mental health levels of care and is willing to provide examples of potential mental health level language.
- Supports recommendations to increase use of telepsychiatry, particularly in correctional facilities.
- Agrees with recommendations to reduce licensing barriers for behavioral health practitioners to increase behavioral health workforce.
- Will continue to pursue the expansion of inpatient beds in areas of the state in most need, as recommended in the Renee Schulte Consulting, LLC, final report.
- Is seeking guidance from the Legislative Assembly regarding whether children and adolescent inpatient services should be provided at the State Hospital or by private providers. The department indicated there is interest among private providers to provide additional children and adolescent inpatient services which may be a better option than re-establishing a children and adolescent unit at the State Hospital.
- Does not have the number of staff necessary to implement the Renee Schulte Consulting, LLC, final report recommendations.

### **Department of Health and Human Services Workgroups**

The committee encouraged DHHS to form behavioral health workgroups with public and private organizations to implement acute psychiatric hospitalization, crisis stabilization, and geropsychiatric recommendations included in the Renee Schulte Consulting, LLC, final report at the State Hospital, critical access hospitals, and other provider facilities.

The committee received testimony from DHHS regarding the workgroups formed to address recommendations included in the Renee Schulte Consulting, LLC, final report. The testimony indicated:

- DHHS formed a workgroup related to behavioral health services in critical access hospitals and a workgroup related to geropsychiatric needs in the state, which have goals of identifying barriers for individuals to receive services and finding solutions to increase access to those services.
- Because the goals of the task forces align with recommendations from the 2018 HSRI report, DHHS has contracted with HSRI to facilitate the workgroup meetings.
- Through September 2022, the behavioral health services in critical access hospitals workgroup met to discuss recommendations in the Renee Schulte Consulting, LLC, final report and identify barriers for critical access hospitals to provide behavioral health services.
- The behavioral health services in critical access hospitals workgroup identified transportation to and from critical access hospitals as a barrier for individuals to receive behavioral health services.
- Through September 2022, HSRI hosted two meetings of the geropsychiatric services workgroup to discuss service needs and concerns of individuals with significant behavioral health, aging, and disability needs. Most stakeholders in the geropsychiatric services workgroup were in support of the Renee Schulte Consulting, LLC, recommendation to create separate regulations and licensing standards for populations with complex needs and were in support of changing the term "geropsychiatric" to reflect that adults younger than 55 are provided these services.
- The next steps of the geropsychiatric services workgroup include evaluating best practices of other states regarding needs of different age population groups and the creation of separate regulations and licensing standards.

### **Other Testimony Received**

The committee received testimony and comments from the stakeholders, providers, and other interested persons, including:

- Mental Health Advocacy Network - Regarding acute psychiatric hospital, residential care, and behavioral health services and programs available and any recommendations of additional services and needs in the state.
- Mandan, Hidatsa, and Arikara Nation - Regarding SUD treatment services and programs available and recommendations for additional behavioral health services and needs in the state.

- Mosaic Wellness Center - Regarding behavioral health services available in rural communities and recommendations for additional services and needs in the state.
- North Dakota Hospital Association - Regarding acute psychiatric hospitalization, residential care, and behavioral health services available and recommendations for additional services and needs in the state.
- Altru Health System - Regarding acute psychiatric hospitalization, residential care, and behavioral health services available and recommendations for additional services and needs in the state.
- West Central Human Service Center - Regarding acute psychiatric hospital and residential care services and programs available and recommendations for additional services and needs.
- Catholic Health Initiatives St. Alexius - Regarding contracts with private providers for the expansion of behavioral health services in western North Dakota.
- Anne Carlsen Center - Regarding behavioral health services and programs available and suggestions for additional services needed in the state.
- Dakota Boys and Girls Ranch - Regarding behavioral health services and programs available and suggestions for additional services in the state.
- Fargo Medical Center - Regarding federal suicide prevention and treatment programs available to North Dakota veterans and any additional service needs.
- Information Technology Department - Regarding availability of behavioral health data shared on the North Dakota Health Information Network, capabilities of the network, and any limitation for sharing behavioral health data.
- Integrated Telehealth Partners - Regarding telepsychiatry services the organization provides and services available to North Dakota providers.
- Sanford Mayville Medical Center and Sanford Hillsboro Medical Center - Regarding the role of rural providers providing behavioral health services in the state and comments regarding recommendations included in the Renee Schulte Consulting, LLC, final report.
- Grafton Unity Medical Center - Regarding the role of rural providers providing behavioral health services in the state and comments regarding recommendations included in the Renee Schulte Consulting, LLC, final report.
- Blue Cross Blue Shield of North Dakota - Regarding the organization's role in the behavioral health system in the state and comments regarding recommendations included in the Renee Schulte Consulting, LLC, final report.
- National Council for Mental Wellbeing - Regarding certified community behavioral health clinic models.
- Prairie St. John's Hospital - Regarding acute psychiatric, residential treatment, and behavioral health services and programs available and suggestions for additional services needed in the state.
- Altru Health System - Regarding the organization's plans to expand inpatient behavioral health services.

### **Tours**

The committee toured the following facilities while studying acute psychiatric hospitalization and related step-down residential treatment and support needs in the state:

- The State Hospital grounds and facilities, including the power plant, all faiths church, administration building, Gronewald Middleton Building, New Horizons Building, and LaHaug Building.
- Prairie St. John's Hospital grounds and facilities, including existing facilities and the new facility scheduled to be completed in January 2023.

### **Recommendations**

The committee considered the following bill drafts and resolution drafts relating to the study of acute psychiatric and residential care needs in the state:

- A resolution draft [\[23.3014.01000\]](#) relating to the State Hospital and terminology.
- A resolution draft [\[23.3015.01000\]](#) relating to terminology describing public institutions.
- A resolution draft [\[23.3016.01000\]](#) relating to a State Hospital.
- A bill draft [\[23.0182.04000\]](#) relating to the object of the State Hospital.
- A bill draft [\[23.0183.02000\]](#) relating to a study of building a new State Hospital.
- A bill draft [\[23.0184.02000\]](#) relating to the demolition of State Hospital buildings.

- A bill draft [\[23.0201.01000\]](#) relating to a Legislative Management study regarding the implementation of behavioral health and acute psychiatric treatment recommendations.

The committee recommends the following bill drafts and resolution drafts:

- A resolution draft [\[23.3015.01000\]](#) to amend the Constitution of North Dakota to update terminology related to the State Hospital and other institutions included in Sections 12 and 13 of Article IX of the Constitution of North Dakota.
- A bill draft [\[23.0206.01000\]](#) to provide for a Legislative Management study regarding the implementation of behavioral health and acute psychiatric treatment recommendations. The bill draft provides for a Legislative Management study of the implementation of recommendations of the 2018 HSRI report and the 2022 Renee Schulte Consulting, LLC, report.
- A bill draft [\[23.0207.01000\]](#) to provide a one-time contingent \$2 million appropriation from the general fund to DHHS to demolish unused buildings on the State Hospital campus, including the milk barn, pig barn, and water treatment plant buildings.

## **IMPLEMENTATION OF EXPANDED BEHAVIORAL HEALTH SERVICES STUDY**

### **Background**

Section 2 of Senate Bill No. 2161 (2021) directed a study regarding the implementation of expanded behavioral health services.

The 2017-18 interim Human Services Committee received information regarding the Department of Human Services' (DHS) actions relating to behavioral health. The department contracted with HSRI for \$160,000 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. The final HSRI report included 13 recommendations, or "aims," to direct future behavioral health policy and services in the state.

Senate Bill No. 2012 (2019) included an ongoing \$300,000 general fund appropriation for the implementation of the study recommendations during the 2019-21 biennium.

The 2019-20 Human Services Committee studied the implementation of the recommendations of the HSRI study of North Dakota's behavioral health system. The committee received updates regarding the status of implementation of recommendations included in the HSRI study of the state's behavioral health system. The committee made no recommendations regarding the study of the implementation of recommendations included in the HSRI report on the state's behavioral health system.

In House Bill No. 1012 (2021), the Legislative Assembly continued ongoing funding of \$250,000 from the general fund for DHS to continue implementing the HSRI recommendations during the 2021-23 biennium.

### **Medicaid 1915(i) State Plan Amendment**

A recommendation of the 2018 North Dakota behavioral health system study conducted by HSRI was to diversify and enhance funding for behavioral health, including pursuing a Medicaid 1915(i) state plan amendment. The 2019 Legislative Assembly appropriated ongoing funding of \$9,397,991, of which \$4,053,273 was from the general fund and \$5,344,718 from other funds, to allow DHS to administer services to children and adults through a Medicaid 1915(i) plan amendment, including hiring 3 FTE positions.

Section 43 of Senate Bill No. 2012 (2019) required DHS to implement and manage a Medicaid 1915(i) state plan amendment for children and adults with behavioral health conditions for fiscal year 2021. The section provided the requirements of Chapter 54-44.4 do not apply to the addition of coverage consistent with the traditional Medicaid 1915(i) state plan to the managed care contract between DHS and the Medicaid Expansion managed care organization. The department and the Medicaid Expansion managed care organization were required to ensure the appropriate contract amendment was adopted for coverage beginning July 1, 2020.

In January 2021, CMS approved a Medicaid 1915(i) state plan amendment from DHS to allow state home- and community-based services programs to be eligible for Medicaid funding.

In Section 56 of House Bill No. 1012 (2021), the Legislative Assembly provided legislative intent that funding appropriated from the general fund for supported employment in Section 1 of the bill be used to continue contracts with

existing evidence-based supported employment providers during the 2021-23 biennium, and that any funding available through the Medicaid 1915(i) state plan amendment be utilized before funding appropriated from the general fund.

The committee received testimony from DHHS regarding implementation of the Medicaid 1915(i) state plan amendment. The testimony indicated:

- To be eligible for services before January 2022, an individual must have been enrolled in North Dakota Medicaid or Medicaid Expansion, have a federal poverty level at or below 150 percent, have a substance use, mental health, or brain injury diagnosis, have a WHODAS score of 50 or more, and reside in and receive services in a setting meeting the federal home- and community-based settings rule.
- In January 2022, CMS authorized DHHS to decrease the WHODAS score requirement from 50 to 25.
- From January 1, 2022, through September 25, 2022, 132 individuals with WHODAS scores of 25 to 49 were eligible for and received Medicaid 1915(i) services compared to 137 individuals with WHODAS scores of 50 or greater receiving services during this time period.
- Future implementation steps include establishing rural differential rates, updating the payment methodology for nonmedical transportation services, negotiating additional exceptions to conflict-of-interest rules with CMS, identifying barriers to individual and provider enrollment, continuing to provide information to community referral sources and potential providers, and providing additional care coordinator training.

### **Bed Management System**

Section 27 of House Bill No. 1012 (2021) required DHHS to establish and maintain a behavioral health bed management system to improve utilization of behavioral health bed capacity. The section required public and private providers of residential or inpatient behavioral health services to participate in and report daily to DHHS the information and documentation necessary to maintain the behavioral health bed management system in the form and manner prescribed by DHHS.

The committee received testimony from DHHS regarding implementation of the bed management system. The testimony indicated:

- 25 states have either implemented or are implementing a behavioral health bed management system.
- The average cost of the behavioral health bed management system software is \$150,000 and annual maintenance costs average \$60,000 to \$70,000, depending on the complexity of the system.
- Research of behavioral health bed management systems by DHHS and project planning analysis by the Information Technology Department, including an analysis of how the bed management system will integrate with the North Dakota Health Information Network, have been completed.
- The behavioral health bed management system will include a web-based electronic database, identify the number of available beds and the types of available beds, include data from public and private entities, be available to crisis and emergency personnel, and may be accessible to the public.
- Some providers have concerns the behavioral health bed management system will result in increased pressure to accept patients and the system will create unnecessary steps for admission.
- DHHS is considering the possibility of integrating the behavioral health bed management system with the emergency bed management system.
- DHHS applied for funding for the bed management system from CMS on September 9, 2022, and the estimated time frame for CMS application review is November or December 2022.
- DHHS intends to issue an RFP in November 2022, choose a vendor in December 2022, negotiate the vendor contract in January 2023, seek CMS approval of the contract in March 2023, begin the project in May 2023, and complete the project in January 2024.
- Although the estimated project completion date is later than originally estimated, DHHS does not anticipate requesting additional funding for the project from the 2023 Legislative Assembly if DHHS is awarded federal funding from CMS.

### **Mental Health Registry**

Senate Bill No. 2161 (2021) created Section 50-06-06.15 and requires DHHS to create a registry of mental health programs in the state and for DHHS to make the registry available on the department's website. The committee received testimony from DHHS regarding the status of the mental health registry, including cooperation and participation from

providers, how the registry will integrate with the 211 crisis system, and when the registry will be available to the public. The testimony indicated:

- On July 18, 2022, DHHS notified all licensed mental health providers, including social workers, marriage and family therapists, psychologists, psychiatrists, counselors, and advance practice registered mental health nurses, of the requirement to register for the mental health registry.
- The mental health registry became available for citizen use on October 3, 2022, and consists of 132 registered organizations operating at 161 locations, of which 155 locations provide adult services and 98 provide children and adolescent services.
- Citizens can use the mental health registry to search by program name, city, county, telehealth options, adult services, or children services.
- The registry will provide a list and location map of providers matching the criteria searched.

### Human Services Research Institute

The committee received testimony from HSRI regarding implementation of recommendations from the 2018 HSRI report. The testimony indicated:

- The Behavioral Health Planning Council, which is an advisory council appointed by the Governor, consists of 10 subcommittees that are implementing the HSRI report recommendations.
- The Behavioral Health Planning Council advises all project activities, including plan development, communication with the public, and the approval of strategic plans.
- The HSRI recommendation implementation strategic plan included 138 potential strategic goals that were narrowed to 28 finalized strategic goals. The 28 strategic goals are combined into 13 aims to summarize the recommendations in the HSRI report.
- The development of the strategic plan considered the results of a public survey conducted by HSRI which included responses from 570 individuals throughout the state.
- The four phases of implementing the recommendations are strategic planning, prioritization and refinement, initiation, and monitoring and sustaining the recommendations. As of July 2022, the implementation of recommendations is in the monitoring and sustaining phase.
- Progress on implementation of the recommendations from the HSRI report have been delayed due to the COVID-19 pandemic.
- HSRI recently selected a contractor with experience working with behavioral health workforce to facilitate a behavioral health summit in September 2022 at which 65 attendees from 39 organizations reviewed HSRI report Aim 7 related to engagement in targeted efforts to recruit and retain a qualified and competent behavioral health workforce.
- Aim 8 related to expanding telebehavioral health services is being updated due to telework changes resulting from the COVID-19 pandemic.
- HSRI agrees with the Renee Schulte Consulting, LLC, final report that additional and more focused data collection is needed to provide improved behavioral health services in the state.

The testimony indicated progress on the 13 aims ranges from 39 to 100 percent complete or in progress and on time through July 2022, as follows:

Aim	Objective	Percentage Complete or In Progress and On Time
1	Develop a comprehensive implementation plan	87%
2	Invest in prevention and early intervention	86%
3	Ensure all North Dakotans have timely access to behavioral health services	64%
4	Expand outpatient and community-based service array	91%
5	Enhance and streamline system of care for children and youth	39%
6	Continue to implement and refine criminal justice strategy	63%
7	Engage in targeted efforts to recruit and retain competent behavioral health workforce	75%
8	Expand the use of telebehavioral health	83%
9	Ensure the system reflects values of person centeredness, cultural competence, and trauma-informed approaches	86%
10	Encourage and support the efforts of communities to promote high-quality services	100%
11	Partner with tribal nations to increase health equity	100%
12	Diversify and enhance funding for behavioral health	100%
13	Conduct ongoing, system-side data-driven monitoring of needs and access	80%

## **Considerations and Recommendation**

The committee considered two bill drafts relating to the study of implementation of expanded behavioral health services:

- A bill draft [\[23.0185.02000\]](#) relating to regional human service centers entering contracts with private behavioral health providers.
- A bill draft [\[23.0186.02000\]](#) relating to human service centers becoming certified community behavioral health clinics.

The committee recommends a bill draft [\[23.0208.01000\]](#) to require each human service center to begin the process of becoming a certified community behavioral health clinic to provide continuous community-based behavioral health and related physical health care services for children and adults.

## **BEHAVIORAL HEALTH NEEDS OF INCARCERATED ADULTS STUDY**

### **Background**

House Bill No. 1470 (2021) directed a study regarding behavioral health needs of incarcerated adults.

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 Parole and Probation 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 privately operated facilities to provide transition services.

The Adult Services Division of DOCR 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.

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, which is located west of Mandan and is the state's secure juvenile correctional institution. Juvenile programming at the Youth Correctional Center 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.

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 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.

The Tompkins Rehabilitation and Corrections Center (TRCC) is located on the State Hospital campus and historically was operated by 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 renamed the 60-bed male unit the James River Minimum Unit.

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

The committee received testimony from DOCR regarding prison-based behavioral health services, community support services, and jail-related services. The testimony indicated:

- DOCR employs 43 addiction counselors, social workers, professional counselors, psychologists, and administrative personnel to address behavioral health needs of incarcerated adults.
- Individual prison-based services available to incarcerated adults include crisis management, individual therapy, behavioral management, and medications for opioid use disorder services.
- Group programs available to incarcerated adults include a new arrival group, cognitive-behavioral interventions for substance use, conflict resolution program, new pathways to health relationships, cognitive behavioral interventions for sexual offenders, free your mind program, and gender-responsive groups.

- The DOCR special assistance unit includes 22 beds and 4 observation cells where crisis management; individual behavior plans; chemical addiction assessment and treatment; daily group programming; and prosocial structured out-of-cell time are provided through in-person and telehealth services. The state does not have a specialized unit for female patients.
- Community-based behavioral health services available in DOCR facilities include the free through recovery program, SUD treatment advanced practice and aftercare, and thinking for a change program.
- Jail-related behavioral health services include screening, crisis management, withdrawal management, psychiatry services, limited group programs, and the Cass County community support initiative.
- The estimated average number of community supervision individuals needing acute hospital care in the state is approximately 140 per day, of which 59 require acute psychiatric care and 81 require acute chemical care.
- DOCR and DHHS coordinate meetings, exchange patient documentation, sentencing information, treatment plans, psychological diagnostic assessment information, and other data as necessary to ensure a successful transition from correction facilities to the State Hospital. The State Hospital will assess the parolee for 30 to 60 days to complete a psychiatric evaluation and provide disposition recommendations to DOCR. A recommendation for the individual to remain at the State Hospital without the individual's consent must be consistent with involuntary commitment requirements of Chapter 25-03.1.
- The Heart River Correctional Center is a minimum-security women's prison located in Mandan which is not equipped to treat residents with acute psychiatric diagnoses but DOCR is working with a vendor on a potential plan for a new facility that would include a unit to treat residents with acute psychiatric diagnoses.

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

The committee received testimony from DWCRC regarding behavioral health services available to incarcerated adults, any additional services needed, and infrastructure needs to facilitate behavioral health services. The testimony indicated:

- The need for behavioral health services has increased in western North Dakota but available services have decreased, resulting in jails becoming the holding facilities for mentally ill individuals due to the lack of private sector providers.
- A mental health facility and stabilization beds are needed in western North Dakota to provide individuals appropriate behavioral health and long-term psychiatric services and to prevent individuals from cycling in and out of jails.
- Some individuals are accepted for transfer to the State Hospital but are quickly returned with instructions to seek services from the private sector in the community.
- Despite the opening of the Heart River Correctional Center in Mandan, the needs of DWCRC have not changed due to an increase in the number of residents needing mental health or substance abuse treatment.

### **Bismarck Transition Center**

The committee received testimony from the Bismarck Transition Center (BTC) regarding the current and historical number of individuals served at the center, facility capacity, behavioral health services available, and any additional services needed. The testimony indicated:

- BTC has 145 male beds and 20 female beds and provides American Society of Addiction Medicine certified programs, the thinking for a change program, Alcoholics Anonymous and Narcotics Anonymous, and Bible study.
- BTC does not provide medical and mental health services to residents, as residents are expected to access these services within the community.
- Residents' ability to access mental health services is limited due to frequent lack of insurance coverage or financial means.
- Community, Counseling, and Correctional Services, Inc., (CCCS) which owns BTC, is considering a pilot program for a 90- to 120-day dual diagnosis treatment center in Bismarck for individuals in need of mental health, drug or alcohol addiction, and criminal offense services. The company provides these services at locations in Butte, Warm Springs, Lewistown, and Glendive, Montana.
- The proposed program would include an additional 16 to 20 beds on the second floor of BTC, would focus on female beds due to high demand in the area, and would require funding from the state at a cost of approximately \$120 per day per bed because the length of the program will result in it being ineligible for Medicaid reimbursement.



- The programs offered in Montana have been Medicaid-eligible and CCCS bills the Montana state Medicaid program for services. Dual diagnosis treatment programs in Montana avoided a Medicaid IMD exclusion designation due to a Medicaid waiver obtained by CCCS.

### **Law Enforcement**

The committee received testimony from law enforcement organizations regarding behavioral health services available to incarcerated adults, any additional services needed, and infrastructure needs to facilitate behavioral health services. The testimony indicated:

- Despite Fargo being the area of the state with the most behavioral health resources available, behavioral health demand has significantly increased, the behavioral health system lacks sufficient resources, and outcomes are worsening for individuals needing behavioral health services in the Fargo area.
- The Cass County Sheriff's office contracts with an independent psychiatrist for supplemental care, but the time needed to treat the increasing number of individuals needing services exceeds the psychiatrist's time available, resulting in patients waiting for psychiatric care or medications for up to 8 weeks.
- Capacity concerns at the State Hospital have resulted in delays in receiving psychiatric treatment services for inmates.
- Data and information for continued care services is gathered in different systems, which is not always available to each organization or agency reviewing patient information.
- Services available to incarcerated adults at the Burleigh-Morton County Detention Center include mental health and SUD services and access to a licensed addiction counselor and behavioral health therapist to provide treatment programming, health care treatment and therapy services during incarceration, and medications and other behavioral health services.
- Although private providers conduct a limited number of assessments ordered by the District Court for Burleigh-Morton County Detention Center inmates, mental health and psychiatric services are accessed primarily through the West Central Human Service Center and the State Hospital.
- The Burleigh-Morton County Detention Center is working with the Attorney General's office to expand medically assisted treatment services in jail facilities to engage opioid-addicted inmates with medication and to enroll the inmates in a SUD treatment program prior to being released.
- Infrastructure needs and concerns of Burleigh-Morton County Detention Center include the lack of treatment staff and programs in the community, coordination of services, and lack of convenient and accessible transportation for inmates.

### **Indian Affairs Commission**

The committee received testimony from the Indian Affairs Commission regarding behavioral health services available to incarcerated adults on tribal land, collaboration with law enforcement and behavioral health service providers, and recommendations for additional services needed in the state. The testimony indicated the Indian Affairs Commission has held meetings with each tribe, the Behavioral Health Planning Council, and other groups about behavioral health needs of incarcerated tribal members; and works with DOCR to help individuals leaving incarceration to return to society.

### **Tour**

The committee toured the James River Correctional Center in Jamestown, including the Special Assistance Unit while studying behavioral health needs of incarcerated adults.

### **Conclusion**

The committee makes no recommendation regarding the study of behavioral health needs of incarcerated adults.

## **MENTAL AND BEHAVIORAL HEALTH SERVICES OF OCCUPATIONAL BOARDS STUDY** **Behavioral Health Occupational Boards**

Senate Bill No. 2336 (2021) directed a study regarding the occupational boards that address mental health and behavioral health issues.

The committee received testimony from the State Board of Psychologist Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, North Dakota Marriage and Family Therapy Licensure Board, and Education Standards and Practices Board regarding mental and behavioral health services provided by licensees, the frequency of rule review, licensing requirements, history and trends of the licensing of foreign practitioners and any additional licensure requirements for foreign practitioners, reciprocity agreements with surrounding states, fees charged by the board, training requirements for board members and executive directors,

executive director turnover trends, the average length of service of board members, and benefits and concerns having administration and information technology (IT) services being provided by the state.

### **State Board of Psychologist Examiners**

Testimony from the State Board of Psychologist Examiners indicated:

- The board does not have authority to enter reciprocity agreements with other states but it may grant a license to an applicant who has a license in good standing in another state.
- The board allows practitioners to provide telehealth services in certain circumstances.
- The board did not deny any out-of-state applications during 2019, 2020, or 2021.
- The board, Association of State and Provincial Psychology Boards, and Canadian psychologist organizations are evaluating licensure requirements of psychologists in an effort to allow for quick licensure of practitioners between the countries. This process has resulted in a uniform license examination that some states have implemented recently, but data on the examination and its results is limited.
- The board may request the 2023 Legislative Assembly to authorize the board to join the psychology interjurisdictional compact, also known as PSYPACT, which allows psychologists to conduct telehealth practice in participating states. At the time of this report, 32 states and the District of Columbia participate in PSYPACT.
- North Dakota Administrative Code Title 66 relates to the State Board of Psychologist Examiners, which was most recently amended in January 2020.

### **Board of Addiction Counseling Examiners**

Testimony from the Board of Addiction Counseling Examiners indicated:

- There has been a trend of younger individuals pursuing addiction counseling, as 36 percent of licensees are age 50 or older while 50 percent of licensees in 2014 were age 50 or older.
- Beginning in June 2020, the board began meeting monthly instead of quarterly to allow for quicker approval of license applications.
- The board would support receiving certain state IT services but is concerned with receiving all IT services from the state which may result in increased costs compared to the cost of services from the current provider.
- North Dakota Administrative Code Title 4.5 relates to the Board of Addiction Counseling Examiners, which was most recently amended in July 2018.

### **Board of Counselor Examiners**

Testimony from the Board of Counselor Examiners indicated:

- Licensees provide services in person or through telehealth in hospitals, jails, clinics, and private practices in individual, group, couples, and family settings.
- There has been increased demand for telehealth counseling services due to the COVID-19 pandemic.
- The board may request the 2023 Legislative Assembly consider a bill to change the board's licensure structure from three tiers to two tiers.
- The board employs an executive secretary who performs all administrative duties and certain IT functions, such as web hosting.
- Potential efficiencies of receiving administrative services from a state agency may include the ability to upgrade online application, renewal, fee collection, document scanning, and storage equipment and software while potential inefficiencies may include the lack of direct communication of someone employed by the board working with licensed counselors.
- North Dakota Administrative Code Title 97 relates to the Board of Counselor Examiners, which was most recently amended in July 2018.

### **North Dakota Board of Social Work Examiners**

Testimony from the North Dakota Board of Social Work Examiners indicated:

- 445 licensure applications were received in 2021, of which 194 applications were out-of-state reciprocity applications, and no applications were denied.
- Since 2017, the board has issued 23 licenses to out-of-state applicants having experience or qualifications substantially like North Dakota's regular licensing standards, pursuant to Section 43-41-07.

- The board has not taken a position on any potential federal or state social work licensure compact legislation but the board supports reasonable efforts to remove undue barriers to licensure.
- North Dakota Administrative Code Title 75.5 relates to the Board of Social Work Examiners, which was most recently amended in April 2021.

### **North Dakota Marriage and Family Therapy Licensure Board**

Testimony from the North Dakota Marriage and Family Therapy Licensure Board indicated:

- The board increased fees in 2017 to pay for two cases involving disciplinary action of licensees but expects to reduce fees in the future.
- The board receives audit services from the State Auditor, legal services from the Attorney General's office, and risk management services from the Office of Management and Budget.
- The board's concerns regarding a requirement to receive administrative services from a state agency include deciding who would be responsible for board budgets, collecting fees, processing invoices, reviewing applications and renewals, processing licensee disciplinary actions, coordinating with national marriage and family therapy organizations, and determining who would have authority to make policy decisions.
- North Dakota Administrative Code Title 111 relates to the North Dakota Marriage and Family Therapy Licensure Board, which was most recently amended in January 2018.

### **Education Standards and Practices Board**

Testimony from the Education Standards and Practices Board indicated:

- Senate Bill No. 2048 (2015) created Section 15.1-13-35 to require candidates for teacher licensure to demonstrate competencies in youth mental health.
- Section 15.1-13-20 allows the board to issue a license to an individual who has a valid license in another state.
- North Dakota Administrative Code Title 67.1 relates to the Education Standards and Practices Board, which was most recently amended in October 2022.

### **Attorney General**

The committee received testimony from the Attorney General's office regarding the agency's involvement with occupational boards providing mental and behavioral health services and similarities and differences of licensing and reciprocity requirements. The testimony indicated:

- Generally, occupational boards are operated by volunteers, receive funding primarily from dues paid by licensees, and do not have resources to issue licenses quicker than the current process.
- Occupational boards that provide mental and behavioral health services have statutes that allow the board to issue a license to an applicant who has a license in good standing in another state if the laws of the other state are substantially the same as North Dakota.
- If the laws of North Dakota and another state are not substantially similar, the Board of Addiction Counseling Examiners and the North Dakota Board of Social Work Examiners may grant a license by reciprocity if the board determines the applicant has experience and qualifications substantially similar to North Dakota's regular licensing standards.

The committee received testimony from the Attorney General's office regarding statutes, rules, and administration duties that could be standardized among occupational boards providing mental and behavioral health services and the estimated biennial cost if the Attorney General's office provided administrative services for all occupational boards in need of administrative assistance. The testimony indicated:

- The estimated biennial cost to provide administrative services for five boards is \$1,245,124 for salaries and benefits and \$233,950 for operating expenses of 7 new FTE positions, including 1 FTE executive director position, 1 FTE attorney position, 1 FTE IT support specialist position, 1 FTE licensing technician position, and 3 FTE administrative assistant positions.
- Statutes that are not consistent among behavioral health occupational boards include those related to board membership, powers, and meetings; license renewals; licensee complaints and discipline; confidential and exempt information requirements; what is permissible for nonlicensees; and reciprocity standards for limited practice without a license, indirect practice, provisional licenses, and telework practice.

- Some states have a separately created agency to provide various services for occupational boards and some have a division created under existing agencies, such as the Secretary of State, Department of Commerce, Department of Labor, or Governor's office.

### **Information Technology Department**

The committee received testimony from the Information Technology Department regarding services provided to behavioral health occupational boards. The testimony indicated the department provides email, virtual private network access, and file sharing and storing services to behavioral health occupational boards including the State Board of Psychologist Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, and North Dakota Board of Social Work Examiners. Other services that could be provided to behavioral health occupational boards include providing physical computer hardware, hardware replacements, and scheduled software updates to increase the boards' data security.

### **Department of Commerce**

The committee received testimony from the Department of Commerce regarding the department's workforce task force efforts related to behavioral health occupations and behavioral health workforce needs in the state, including any changes needed for behavioral health licensure, reciprocity agreements, and composite board considerations. The testimony indicated:

- In February 2020, the Workforce Development Council created a subcommittee of legislators and other stakeholders of occupational licensing boards to evaluate barriers for individuals attempting to enter or move through the workforce with a goal of removing unnecessary barriers to employment.
- National occupational licensure reform has been pursued through interstate compacts, universal license recognition, and reciprocity agreements.
- In May 2022, the Department of Commerce sent surveys to occupational boards and received responses from 35 of 50 boards which revealed behavioral health-related occupational boards average time to process licensure applications during 2021 ranged from 1 day to 4 months.
- The Workforce Development Council intends to recommend a centralized system be developed for licensing boards and recommend policies that remove barriers for professionals to be licensed in the state.

### **University of North Dakota School of Medicine and Health Sciences**

The committee received testimony from the University of North Dakota School of Medicine and Health Sciences regarding behavioral health workforce needs in the state and data regarding student enrollment in behavioral health-related courses at the University of North Dakota. The testimony indicated:

- Approximately 80 percent of School of Medicine psychiatry graduates in the most recent 5 years are practicing psychiatry in North Dakota or near the North Dakota and Minnesota border.
- A concern of new behavioral health professionals is the lack of experienced behavioral health professionals available to train and guide new professionals, which leads to fewer new professionals practicing in low-population areas.

### **Minot State University**

The committee received testimony from Minot State University regarding behavioral health workforce needs in the state and data regarding student enrollment in behavioral health-related courses at Minot State University. The testimony indicated:

- Minot State University has the only addiction studies program in the state which averages 9 to 10 graduates each year and the only school psychology program in the state which averages 7 graduates each year and currently has 26 students enrolled in the program.
- Tuition costs and lack of available graduate programs can be barriers for students to pursue behavioral health careers.
- Programs offered at Minot State University allow students to graduate with educational qualifications required to become licensed as both a social worker and an addiction counselor.

### **Considerations and Conclusion**

The committee considered bill drafts relating to the study of mental and behavioral health services of occupational boards:

- A bill draft [\[23.0059.01000\]](#) relating to administrative services provided to occupational boards.

- A bill draft [\[23.0110.01000\]](#) relating to an appropriation to DHHS for the student loan repayment program.
- A bill draft [\[23.0110.02000\]](#) relating to an appropriation to DHHS for the student loan repayment program and authorizing psychiatric registered nurses be eligible for the program.
- A bill draft [\[23.0187.01000\]](#) relating to the North Dakota Board of Social Work Examiners' participation in the development of a social work licensure compact.
- A bill draft [\[23.0188.02000\]](#) relating to occupational board IT services provided by the Information Technology Department and relating to compensation of occupational board members.

The committee makes no recommendation regarding the study of mental and behavioral health services of occupational boards.

# 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 statutes relating to administrative rules. 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 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 Senators Nicole Poolman (Chairman), Joan Heckaman, Jerry Klein, Randy D. Lemm, and Shawn Vedaa and Representatives Bill Devlin, Tom Kading, Karen Karls, Kim Koppelman, Andrew Marschall, Brandy Pyle, Bernie Satrom, Nathan Toman, and Robin Weisz.

## ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are the 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. 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 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 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 agency's response, 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 the 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 regulatory analysis was required by NDCC Section 28-32-08. 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 required by NDCC Section 28-32-08.1. If a regulatory analysis or small entity economic impact statement 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. If a fiscal note was prepared, a copy is to be provided to the committee.
- Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a 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 for declaring the rules to be an emergency, the facts that support the declaration, a copy of the Governor's approval of the emergency status of the rules, and the steps taken to make the rules known to persons who could reasonably be expected to have a substantial interest in 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 1,218 rules sections and 1,716 pages of rules changed from January 2021 through October 2022. 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
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
January 2021-October 2022	1,218

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
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
January 2021-October 2022	1,716

## Rule Review Schedule

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

Filing Date	Committee Meeting Deadline	Effective Date
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.

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.

### **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 15<sup>th</sup> 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 15<sup>th</sup> 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.

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

The committee approved a request from the State Department of Health for the repeal of NDAC Sections 33-33-10-01, 33-33-10-02, and 33-33-10-03 relating to cottage food products due to the invalidation of the rules by a state district court order.

The committee approved a request from the Department of Human Services for the repeal of NDAC Chapter 75-03-12, relating to foster parent grievance procedure, due to the repeal of NDCC Chapter 50-11.2 by Senate Bill No. 2086 (2021).

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

The committee carried over for consideration rules of the State Board of Dental Examiners to address concerns raised by the North Dakota Dental Association, North Dakota Dental Assistants Association, and North Dakota Dental Hygiene Association relating to the board's rulemaking process and the communication with the dental community. The committee, at the request of the board, withdrew the rules from consideration.



The committee carried over for consideration a rule of the North Dakota Board of Social Work Examiners making it a violation of the board's code of ethics for a licensed social worker to practice conversion therapy. The committee and the board agreed to amendments offered by the board to address the issue.

The committee carried over for consideration rules of the State Board of Dental Examiners relating to dental assistants' and dental hygienists' permitted duties on patients of record due to concerns of its potential effect on a teeth aligner company's business model. The committee, at the request of the board, withdrew the rules from consideration.

The committee carried over for consideration a rule of the State Board of Cosmetology permitting service animals and companion animals in licensed salons due to concerns regarding the difference in training between service and companion animals. The committee agreed to an amendment offered by the board to address the issue.

The committee, as authorized by NDCC Section 28-32-18(3), approved requested amendments to the rules of the State Board of Registration for Professional Engineers and Land Surveyors (NDAC Section 28-03.1-01-03(3)) and the Department of Human Services (NDAC Sections 75-02-01.3-05, 75-03-14-04, 75-03-17-05, 75-03-17-16.1, 75-03-36-03, 75-03-36-16, 75-03-36-16.1, and 75-03-41-19).

#### **Rules Voided by Committee**

The committee considered a motion to void a rule of the North Dakota Board of Social Work Examiners, relating to conversion therapy, for being arbitrary and capricious and going beyond legislative intent. The motion to void the rule failed.

**TABLE A**

<b>Statistical Summary of Rulemaking January 2021 Through October 2022 - Supplements 379 Through 386</b>									
<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>
4	385 - Jul 22	Management and Budget, Office of	5	4	0	7	0	0	16
6	385 - Jul 22	Aeronautics Commission	3	2	0	1	0	0	6
7	383 - Jan 22	Agriculture Commissioner	0	20	0	10	0	0	30
10	381 - Jul 21	Attorney General	2	0	0	0	0	0	2
	385 - Jul 22		1	0	0	0	0	0	1
	386 - Oct 22		6	0	0	2	0	0	8
13	384 - Apr 22	Department of Financial Institutions	27	4	0	7	0	0	38
17	379 - Jan 21	Chiropractic Examiners, Board of	27	2	0	1	0	0	30
20	380 - Apr 21	State Board of Dental Examiners	2	0	0	0	0	0	2
	381 - Jul 21		6	0	0	0	0	0	6
	385 - Jul 22		21	2	0	2	0	0	25
	386 - Oct 22		2	0	0	0	0	0	2
20.5	385 - Jul 22	Dietetic Practice, Board of	8	1	0	0	0	0	9
28	382 - Oct 21	Engineers and Land Surveyors, Board of Registration for Professional	18	0	0	0	0	0	18
		Cosmetology, Board of	41	0	0	3	0	0	44
	385 - Jul 22		1	0	0	0	0	0	1
33	385 - Jul 22	State Department of Health	13	3	0	0	0	0	16
	386 - Oct 22		1	5	0	0	0	0	6
33.1	381 - Jul 21	Department of Environmental Quality	64	0	0	1	0	0	65
	383 - Jan 22		12	0	0	0	0	0	12
	385 - Jul 22		3	0	0	0	0	0	3
	386 - Oct 22		0	8	0	0	0	0	8
37	379 - Jan 21	Department of Transportation	5	0	0	0	0	0	5
38	383 - Jan 22	Highway Patrol	3	0	0	8	0	0	11
43	384 - Apr 22	Industrial Commission	18	27	0	0	0	0	45
45	380 - Apr 21	Insurance, Commissioner of	7	9	0	0	0	0	16
	384 - Apr 22		8	10	0	0	0	0	18
50	386 - Oct 22	North Dakota Board of Medicine	29	1	0	21	0	0	51
55.5	380 - Apr 21	Occupational Therapy Practice, Board of	11	1	0	0	0	0	12
60	383 - Jan 22	Pesticide Control Board	1	0	0	0	0	0	1
61	383 - Jan 22	State Board of Pharmacy	4	5	0	0	0	0	9
62	385 - Jul 22	Plumbing, Board of	6	0	0	0	0	0	6
67	380 - Apr 21	Public Instruction, Superintendent of	11	0	0	0	0	0	11
	382 - Oct 21		7	7	0	0	0	0	14
	383 - Jan 22		1	23	0	0	0	0	24
	384 - Apr 22		1	14	0	0	0	0	15
67.1	382 - Oct 21	Education Standards and Practices Board	7	0	0	0	0	0	7
	386 - Oct 22		5	0	0	0	0	0	5
69	379 - Jan 21	Public Service Commission	44	1	0	2	0	0	47
	383 - Jan 22		10	1	0	0	0	0	11
	386 - Oct 22		5	0	0	0	0	0	5
69.5	386 - Oct 22	North Dakota Racing Commission	51	1	0	3	0	0	55
70	385 - Jul 22	Real Estate Commission	55	0	0	12	0	0	67
70.5	385 - Jul 22	Real Estate Trust Account Committee	0	0	0	5	0	0	5
71	384 - Apr 22	Retirement Board	9	1	0	0	0	0	10
72	383 - Jan 22	Secretary of State	3	0	0	2	0	0	5
74	385 - Jul 22	Seed Commission	8	5	0	2	0	0	15
75	379 - Jan 21	Department of Human Services	1	6	0	0	0	0	7
	382 - Oct 21		28	0	0	5	0	0	33
	383 - Jan 22		87	15	0	1	0	0	103
	384 - Apr 22		12	10	0	0	0	0	22
	385 - Jul 22		20	3	0	0	0	0	23
	386 - Oct 22		13	0	0	0	0	0	13
75.5	380 - Apr 21	Social Work Examiners, Board of	7	1	0	4	0	0	12
	381 - Jul 21		1	0	0	0	0	0	1
82	381 - Jul 21	Board of Trustees of the Teachers' Fund for Retirement	3	0	0	0	0	0	3
85	379 - Jan 21	University and School Lands, Board of	1	24	0	0	0	0	25
	384 - Apr 22		6	11	0	7	0	0	24
87	384 - Apr 22	Veterinary Medical Examiners, Board of	20	10	0	0	0	0	30

<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>
92	379 - Jan 21	Workforce Safety and Insurance	1	0	0	0	0	0	1
	383 - Jan 22		13	0	0	1	0	0	14
	386 - Oct 22	Private Investigative Security Board	6	7	0	0	0	0	13
96	384 - Apr 22	Board of Clinical Laboratory Practice	2	0	0	0	0	0	2
106	385 - Jul 22	Board of Athletic Trainers	9	0	0	2	0	0	11
109	384 - Apr 22	Peace Officer Standards and Training Board	41	4	0	1	0	0	46
112	379 - Jan 21	Integrative Health Care	3	14	0	0	0	0	17
<b>Total</b>			<b>846</b>	<b>262</b>	<b>0</b>	<b>110</b>	<b>0</b>	<b>0</b>	<b>1218</b>

# AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The Agriculture and Natural Resources Committee was assigned two studies.

- Section 22 of House Bill No. 1009 (2021) directed a study of how the North Dakota Beef Commission (NDBC) operates and selects commission members.
- House Concurrent Resolution No. 3019 (2021) directed a study of the fiscal and safety impacts of United States Fish and Wildlife Service (FWS) easements in North Dakota on the Department of Transportation (DOT), Department of Agriculture, and counties.

The committee was assigned the responsibility to receive six reports:

- A report from the Advisory Committee on Sustainable Agriculture (ACSA) on the status of the committee's activities, pursuant to North Dakota Century Code Section 4.1-01-11.
- A biennial report from the Federal Environmental Law Impact Review Committee (FELIRC), pursuant to Section 4.1-01-21.1.
- A report from the State Board of Agricultural Research and Education (SBARE) on its annual evaluation of research activities and expenditures, pursuant to Section 15-12.1-17(8).
- The final report from DOT regarding information collected from transportation network companies during the biennium under Section 39-34-05, prior to its repeal.
- Reports from DOT, as requested, on the road train pilot program, pursuant to Section 1 of Senate Bill No. 2176 (2019).
- A report from DOT, before August 1, 2022, on the findings and recommendations of its study and pilot projects on the feasibility and impact of long combination vehicle operations on North Dakota roadways, pursuant to Section 1 of Senate Bill No. 2026 (2021).

Committee members were Senators Randy D. Lemm (Chairman), Michael Dwyer, Jay R. Elkin, Robert O. Fors, Oley Larsen, Larry Luick, Janne Myrdal, Merrill Piepkorn, and Terry M. Wanzek and Representatives Mike Beltz, Mike Brandenburg, Chuck Damschen, Dori Hauck, Dennis Johnson, Dwight Kiefert, Dave Nehring, Kathy Skroch, Paul J. Thomas, Wayne A. Trottier, and Bill Tveit.

## NORTH DAKOTA BEEF COMMISSION

Section 22 of House Bill No. 1009 (2021) directed a study of the NDBC, including the operations of the commission and the selection of commission members.

### Background

House Bill No. 1487 (2021) would have changed the state beef checkoff assessment from a mandatory assessment of \$1 for each animal sold in the state or from the state to a permissive assessment the producer could choose whether to pay. The bill failed to pass the House. House Bill No. 1009 was introduced to provide an appropriation for defraying the expenses of the agriculture commissioner. The enrolled version of the bill directed the Legislative Management to study the NDBC, including the operations of the commission and the selection of commission members. Representatives of the Independent Beef Association of North Dakota (IBAND) testified in support of the study. Testimony indicated concerns were raised regarding the membership of the commission, the need to study the membership and operations of the commission, and displeasure with the beef checkoff system. Testimony suggested the members of the commission should be elected rather than appointed by the Governor, and membership on the board should be diversified to include representatives of all agricultural organizations in the state representing livestock producers, rather than a few select organizations. Testimony indicated diversifying the membership of the commission would be consistent with other commodity groups in the state and surrounding states.

### History of the North Dakota Beef Commission and Federal Law

The Agricultural Marketing Act of 1937 [Pub. L. 75-137; 50 Stat. 246; 7 U.S.C. 674 et seq.] authorized the United States Secretary of Agriculture to set marketing quotas and price schedules, sign voluntary marketing agreements with producers, and issue marketing orders to establish and maintain orderly marketing conditions and prices for agricultural commodities in interstate commerce. The Act authorized commodity councils to regulate and market-specific commodities, including the authority to establish a fee paid by producers to fund research and promotion of the relevant commodity. The federal Beef Promotion and Research Act, which was included in the 1985 Farm Bill [Pub. L. 99-198; 99 Stat. 1354], mandated a national beef checkoff program. The assessment under the national program was, and still is, \$1 per head of cattle sold.

House Bill No. 1327 (1973), also known as the Beef Promotion Act, established the NDBC to provide programs to increase the consumption of domestic beef through advertising and local and national sales promotion and education. The Act also was intended to support research and educational activities of the national livestock and meat board and its beef industry council with at least 50 percent of assessments collected; support research efforts toward solving problems, primarily health, involved in the production of North Dakota beef cattle with at least 25 percent of assessments collected; and enhance the sale of North Dakota cattle. In 1973, the NDBC consisted of nine members appointed by the Governor, including three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at-large. The terms of commission members were 3 years with a restriction that a member could not serve more than two successive 3-year terms. The 1973 Act also required commission members to be United States citizens and residents of the state, be engaged in the phase of the cattle industry the individuals represented for 5 years, and derive a substantial portion of the individual's income from the cattle industry represented.

The 1973 Act was codified as Chapter 4-34. Section 4-34-04 required the three beef producer members to be appointed by the Governor from nominations made by the North Dakota Stockmen's Association, the cattle feeder member to be appointed from nominations made by the North Dakota Cattle Feeders Association, the dairy producer member to be appointed from nominations by the North Dakota State Milk Producers Association, and the public livestock market representative to be appointed from nominations by the North Dakota Livestock Auction Markets Association and the board of governors at the West Fargo Stockyards. Section 4-34-06 required the commission to hold at least three meetings per year. Section 4-34-08 required an assessment of 10 cents per head of cattle sold within the state or from the state.

### **Current Statutory Provisions**

As part of a rewrite of agriculture provisions in the Century Code, which began during the 2007-08 interim, provisions related to the NDBC were repealed in House Bill No. 1025 (2009) and were moved into the newly created Chapter 4.1-03. In 2009, many of the statutory provisions related to the commission existed as enacted in 1973. In 2009, following the rewrite, the nine members of the commission who represented the various interests continued to be appointed by the Governor; however, several changes were made to the appointment process. The beef producer members still are required to be appointed by the Governor from a list of at least two names submitted by the North Dakota Stockmen's Association. However, the cattle feeder member is required to be appointed from a list of at least two names submitted by the North Dakota Stockmen's Association Feeder Council. The dairy producer is required to be appointed from a list of at least two names submitted by the Milk Producers Association of North Dakota. The public livestock market representative is required to be appointed from a list of at least two names submitted by the North Dakota Livestock Marketing Association but the involvement of the board of governors of the West Fargo Stockyards has been removed. The 2009 rewrite also authorized the commission to appoint up to four nonvoting members for a term of 1 year each. The nonvoting members can serve an unlimited number of terms. By 2009, the assessment for cattle sold within the state or from the state increased to 50 cents per head sold or the amount set forth under federal law.

Chapter 4.1-03 provides the general provisions regarding the NDBC, including definitions. Section 4.1-03-02 addresses the membership and qualifications for membership on the NDBC. The section has not been amended since its enactment in 2009. The section requires each commission member be a United States citizen and resident of the state, be actively engaged in the phase of the cattle industry the member represents, be actively engaged in the designated phase of the cattle industry for a period of 5 years, and be a participating producer apart from the representative of the public livestock market. Section 4.1-03-03 provides the term of commission members is 3 years with members prohibited from serving more than two consecutive terms. The section has not been amended since 2009. Section 4.1-03-07, which requires three annual meetings, has not been amended since its enactment in 2009. The beef checkoff assessment under Section 4.1-03-11, which was amended by House Bill No. 1238 (2015), requires a person that sells cattle in the state or from the state to pay an assessment equal to the amount set forth under federal law and an additional state assessment of \$1 for each animal sold.

The requirement to pay an additional assessment of \$1 per head sold included an expiration date clause whereby the additional assessment becomes ineffective if the Attorney General certifies to the NDBC the amount of the assessment due under federal law has increased beyond the amount in effect on July 31, 2015. The amount of the assessment due under federal law in effect on July 31, 2015, was \$1 per head of cattle sold, and the amount due under federal law has not increased. Therefore, the requirement to pay an additional state assessment of \$1 per head sold remains in effect. As a result, a person that sells cattle in the state or from the state is required to pay \$1 per head sold for the federal beef checkoff assessment, and an additional \$1 per head sold under the state assessment. Proceeds from the federal checkoff are split equally between the national program and the NDBC. The entirety of the proceeds from the state checkoff are retained by the NDBC.

## Testimony

### **Agriculture Commissioner**

The committee received testimony from the Agriculture Commissioner regarding discussions with the North Dakota Stockmen's Association, IBAND, North Dakota Farmers Union, and North Dakota Farm Bureau related to the member selection process and operation of the NDBC. The Department of Agriculture facilitated a meeting for interested groups to offer suggestions for reforming the member selection process for the NDBC.

### **North Dakota Beef Commission**

The committee received testimony from several representatives of the NDBC. The North Dakota Beef Commission represents all beef producers in the state and the beef checkoff exists to enhance demand for beef and beef products through promotion, research, and educational efforts. Approximately 1.1 million head of cattle are marketed annually in the state, which generates \$2.2 million in checkoff assessment revenue, of which approximately \$550,000 is remitted to the national board as required by law. Historically, refunds have been requested on approximately 12 percent of checkoff assessments. Unlike state checkoff funds, there is no opportunity for a refund of the federal checkoff assessment. Producers who request a state checkoff assessment refund do not qualify for membership on the NDBC under state law. State and federal checkoffs are assessed each time a head of cattle is sold and may be collected multiple times on a single animal. For the 2019-20 fiscal year, the state checkoff generated \$1.1 million and 913 requests for refunds were received totaling \$136,000.

Beef checkoff funds remitted to the national board are invested with contractors to promote beef and beef products to consumers domestically and internationally, educate stakeholders regarding the benefits of beef and beef products, and conduct research on beef and beef products at the national level. North Dakota beef checkoff funds are invested with contractors for beef promotion, education, and research. Contractors are used to manage the state's beef research portfolio because contractors have the needed expertise and staff to conduct the research more efficiently than NDBC staff. The purpose of the beef checkoff is to create demand for beef and beef products through the funding of research and promotion programs. The committee was informed the demand for beef is at an all-time high.

Representatives from the NDBC supported the current process of determining membership for the NDBC.

### **North Dakota Stockmen's Association**

The committee received testimony from representatives of the North Dakota Stockmen's Association related to the member selection process for the NDBC. Testimony indicated changing the appointment process for the NDBC from the Governor to the Agriculture Commissioner may not result in change to the structure or board makeup of the commission. Also, changing to an election process for board members will require decisions regarding the funding and the organization of elections, as well as a determination of who is a qualified candidate. The North Dakota Stockmen's Association is tasked with submitting names to the Governor for consideration for appointment to the NDBC.

The committee was informed federal law allows for a referendum to terminate or suspend the beef checkoff upon a petition signed by 10 percent, or approximately 88,000, of the eligible producers in the country. The most recent petition to terminate the beef checkoff did not receive the requisite signatures.

### **Independent Beef Association of North Dakota**

The committee received testimony from representatives of IBAND. Testimony indicated concerns with the operations and membership selection procedure of the NDBC and the beef checkoff system. The Independent Beef Association of North Dakota did not oppose the beef checkoff but wanted to ensure state checkoff funds are invested in the promotion, education, and research of beef through in-state programs and the expansion of existing in-state projects. Nominations are regularly submitted by IBAND to the Governor for consideration for appointment to the at-large member seats on the NDBC. Representatives stated no IBAND-nominated individual has been appointed to the commission. Testimony indicated IBAND would be open to amendments to statutory provisions either to give the Agriculture Commissioner the authority to appoint board members or to replace the appointment process with an election process to ensure the commission has a more accurate representation of all producers in the state. The proposed changes to the NDBC included creating eight beef districts in the state determined by the number of cattle in each district; creating an election-based process in which one individual is elected to serve on the NDBC from each of the eight beef districts; and removing the prohibition against serving on the NDBC if an individual has received an assessment refund in the preceding 3 years. The recommended changes would help alleviate concerns from the IBAND members and other beef producers who feel the beef checkoff assessment, membership selection, and appointment process of the NDBC do not adequately represent their interests.

### **North Dakota Farmers Union**

The committee received testimony from a representative of the North Dakota Farmers Union in support of legislation mandating the election of NDBC members because selection of members through an election gives all producers an equal opportunity to serve on the board. An elected board, from North Dakota Farmers Union's perspective, would encourage broader engagement across the industry.

### **North Dakota CattleWomen**

The committee received testimony from a representative of the North Dakota CattleWomen. The North Dakota CattleWomen organization is an affiliate of the American National CattleWomen and an auxiliary of the North Dakota Stockmen's Association. The organization's function is beef promotion and education. North Dakota CattleWomen provided continued support of the current makeup and functions of the NDBC.

### **Various Cattle Producers**

The committee received testimony from various cattle producers from around the state. Some producers were in favor of reforming the beef checkoff and the member selection process of the NDBC, while others were against any further reformation.

### **Committee Considerations**

The committee expressed mixed opinions regarding IBAND's proposal to change the member selection process of the NDBC. The committee discussed the merits of implementing an election process, rather than an appointment process, for members of the NDBC. The committee also discussed reforming the beef checkoff. The committee determined IBAND's ideas regarding the selection process of the NDBC and the beef checkoff held merit, but would need further discussion and clarification throughout the 2023 legislative session.

### **Conclusion**

The committee makes no recommendation regarding its study of the how the NDBC operates and selects its commission members.

## **IMPACTS OF UNITED STATES FISH AND WILDLIFE SERVICE EASEMENTS**

House Concurrent Resolution No. 3019 (2021) directed a study of the fiscal and safety impacts of FWS easements in North Dakota on the DOT, Department of Agriculture, and counties. The study was proposed because the FWS owns perpetual easements in North Dakota, including easements adjacent to roadways; the FWS may impose regulatory requirements on state agencies and political subdivisions constructing or improving roads or engaging in other projects when the FWS deems the projects would impact its interests; the imposition of federal requirements may delay or otherwise negatively impact the construction and improvement of roads or other projects in North Dakota; and delays and other impacts from federal requirements may impede road improvements and repairs necessary for public safety and increase the cost of construction to the state and political subdivisions.

### **Background**

#### **Legislative History**

During the 2021 legislative session, representatives of the North Dakota Grain Growers Association, the North Dakota Farm Bureau, and the North Dakota Stockmen's Association testified in support of the study of FWS easements. Testimony expressed concerns regarding negative impacts of FWS perpetual easements on North Dakota infrastructure and taxpayers. Testimony suggested the FWS has mismanaged both land and water under the easements relating to highways, roads, and landowners subjected to the easements. Testimony further suggested the FWS places its interests above the safety and financial interests of the state, and the mismanagement of the easements results in DOT, other state agencies, and political subdivisions using their limited resources to mitigate the damage caused by the easement mismanagement. Testimony also suggested wet conditions in past years have increased the size of many wetlands in the state under FWS control, and poor management of those wetlands resulted in political subdivisions spending large amounts of money on road maintenance. Finally, testimony suggested the regulations imposed by the federal government burden political subdivisions and delay improvements to important construction projects, and the federal government should be held accountable for its actions.

#### **Federal Laws and Procedures**

Congress established the original precursor to the FWS in 1871 and the FWS was established in 1956. The Fish and Wildlife Service primarily is responsible for the conservation and management of fish, wildlife, and plants, and their habitats through the implementation of federal environmental laws relating to migratory birds and endangered species. Conservation easements are agreements for the protection of wetlands, floodplains, riparian corridors, and endangered species habitats. Easements are rights created by an express voluntary legal agreement to allow a person to make lawful and beneficial use of the land of another without possessing the land. Wetland easements allow the FWS to acquire the right to maintain wetlands on described tracts of land and restrict the landowner from draining, burning, filling, or leveling the wetlands. Easements are recorded on an abstract of title to keep a record of the history of the property. An easement is specific to acreage purchased. As held by the United States District Court of North Dakota in *United States v. Albrecht*, 364 F.Supp. 1349 (1973), an agreement granting the FWS an "...easement or right of way for the maintenance of the land ... as a waterfowl production area in perpetuity..." is a "permanent interest" that continues with the land even if there is a change in ownership.

A FWS easement can be a standard conservation easement or a nonstandard conservation easement. A standard conservation easement conveys a perpetual interest in the lands covered by the easement and provides authorities a legal description, covenants by the landowner, rights reserved by the United States, easement management, and general provisions. A nonstandard conservation easement is similar to a standard conservation easement except it includes a variance allowing farming activity on all or some wetlands. Farming activities include grazing, haying, cutting, plowing, working, and cropping when the wetlands are dry due to natural causes. The Fish and Wildlife Service follows a 16-point process when acquiring easements, which include evaluating property proposed for easements; providing the proposed delineated easement map to the appropriate refuge supervisor for approval; logging the approved delineation package into FWS's land acquisition tracking system; inspecting the property; finalizing the legal description to be included in the easement area; conducting an abstract of title search to ascertain ownership of the property; determining whether there are judgments, liens, or unpaid taxes on the property proposed for easement; sending a formal offer letter to the landowner with a compensation offer, maps, and legal descriptions of the proposed easement area; preparing the easement conveyance document if an offer is accepted; obtaining the title of insurance; receiving a check for consideration; and closing and recording the original documents with the county.

The wetland easement program is authorized by the Migratory Bird Conservation Act of 1929 [Pub. L. 70-770; 45 Stat. 1222; 16 U.S.C. 715 et seq.] and the Migratory Bird Hunting Stamp Act of 1934 [48 Stat. 452; 16 U.S.C. 718 et seq.]. Under the Migratory Bird Conservation Act, "[t]he Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission ... and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes..." (16 U.S.C. 715d). The Act also provides, "[n]o deed or instrument of conveyance shall be accepted by the Secretary of the Interior under ... (the Act) ... unless the state in which the area lies shall have consented by law to the acquisition by the United States of lands in that state" (16 U.S.C. 715f). Nor shall land "be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the governor of the state or appropriate state agency" (16 U.S.C. 715k-5). The North Dakota Legislative Assembly consented "to the United States acquiring, by purchase, gift, devise, or lease, land or water in this state as the United States may deem necessary to establish migratory bird reservations" in accordance with the required consent provision of the federal Act. The consent is codified in Section 20.1-02-18.

Under the Migratory Bird Hunting Stamp Act, the Secretary of the Interior is authorized to sell stamps and use the migratory bird conservation fund "to acquire or defray the expense incident to the acquisition by gift, devise, lease, purchase, or exchange of, small wetland and pothole areas, interests therein, and right-of-way to provide access thereto" (16 U.S.C. 718d (c)). All money received for the stamps is paid into a special fund known as the migratory bird conservation fund (16 U.S.C. 718d). The fund "shall be available for the location, ascertainment, and acquisition of suitable areas for migratory bird refuges under the provisions of the migratory bird conservation Act..." (16 U.S.C. 718d (b)). A 1958 amendment, known as the Small Wetlands Acquisition Program, gave the Secretary of the Interior flexibility to acquire lands or interests in land for waterfowl production areas.

The North Dakota Game and Fish Department receives federal funds for wildlife purposes under the Wildlife Restoration Act (16 U.S.C. 669), which provides the "Secretary of the Interior is authorized to cooperate with the states, through their respective state fish and game departments, in wildlife-restoration projects...; but no money apportioned under this chapter to any state shall be expended therein until its legislature ... shall have assented to the provision of this chapter and shall have passed laws for the conservation of wildlife.... The Secretary of the Interior and the state fish and game department of each state accepting the benefits of this chapter, shall agree upon the wildlife-restoration projects to be aided in such state under the terms of this chapter and all projects shall conform to the standards fixed by the Secretary of the Interior." The term "wildlife-restoration project" must be construed to mean "the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas ... as are suitable ... therefor..." (16 U.S.C. 669a). If the Secretary of the Interior finds the projects conform to standards established by the secretary and approves the plans, "he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes" of the chapter (16 U.S.C. 669e(a)(1)). The Legislative Assembly assented to the Wildlife Restoration Act in Section 20.1-02-17.

Under the Acts previously discussed, North Dakota governors approved or consented to the acquisition of easements by the FWS of over 1.2 million acres of wetlands for waterfowl production areas between 1961 and 1977.

In *Sagsveen Waterfowl Production Areas: A State Perspective*, 60 N.D.L. Rev. 659, 659-661, the author summarized the authorization of waterfowl production areas in reviewing the historical context of the federal-state dispute over these areas. The author noted the 1929 Migratory Bird Conservation Act authorized the acquisition of land for inviolate migratory bird sanctuaries. Section 7 of the Act contained an unusual accommodation to the federal-state relationship--the federal government could not acquire land unless a state consented by law. The State of North Dakota gave its consent in 1931. The 1934 Migratory Bird Hunting Stamp Act, which provided a funding mechanism for the refuge



acquisition program, authorized the sale of migratory bird hunting and conservation stamps (duck stamps) to generate revenue for the newly created migratory bird conservation fund. In addition, the 1958 amendment provided the Secretary of the Interior could acquire waterfowl production areas without the state legislative consent required in the 1929 Act. However, Congress also recognized the tradition of state involvement should be extended to all acquisitions involving money from the Migratory Bird Conservation Fund. The legislation, as finally enacted, states, "[n]o land shall be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the Governor of the State or appropriate State agency."

Following the enactment and consent to the federal Acts by the state, issues arose concerning the duration of easements and the areas covered by FWS easements which led to the enactment of several statutory provisions in 1977 and subsequent litigation. The terms of pre-1976 easements prohibited the draining, filling, leveling, or burning of all wetlands located on the easement acres. The Fish and Wildlife Service estimated pre-1976 easements protected 758,645 wetland acres. However, wetland acres in pre-1976 easements were not delineated, and the actual number of wetland acres protected by the pre-1976 easements is unclear because the tracts of land considered by the easements totaled approximately 4.8 million acres. The easements described the entire parcel of land as subject to an easement instead of the wetland area itself. Pre-1976 easements did not include an agreed-upon easement map showing areas protected by the easement, but the easement summaries described the wetland acres restricted under the easement conveyance which led to disagreements over the location and boundaries of the covered easement areas. In 1977, the Legislative Assembly attempted to limit the duration of wetland easements with the enactment of Section 47-05-02.1.

In 2019, the United States Department of the Interior issued guidance to prioritize mapping of all pre-1976 FWS waterfowl production area perpetual easements to help delineate the wetland easements and settle the issue of which areas are the protected areas of the easements by using high-quality aerial images and including the acreage believed to be protected by the easements. According to the guidance, owners who object to the location or acreage of the new FWS easement map can appeal within 40 days of the date of receipt of the map. The Fish and Wildlife Service issued guidance encouraging FWS personnel and landowners to work on protecting wetland easements without restricting landowner activities on their property. The Fish and Wildlife Service also provides landowners opportunities to participate in an administrative appeal process to resolve questions about compliance and help avoid unnecessary legal actions.

The Fish and Wildlife Service also acts upon requests for right of way for various projects, including highway improvement projects by DOT. Formal requests for right-of-way projects regarding FWS land interests are governed by the rules and regulations under Title 50, Code of Federal Regulations, part 29, regarding land use management for wildlife and fisheries. If federal money is used for the road project, which includes most county road projects, additional requirements may apply, such as compliance with Executive Order No. 11990 regarding the protection of wetlands. The Department of Transportation also is required to comply with additional rules and regulations when undertaking road construction projects on state highways, including Title 23, Code of Federal Regulations, part 771, regarding environmental impacts and related procedures; Title 23, Code of Federal Regulations, part 774, regarding parks, recreation areas, wildlife and waterfowl refuges, and historic sites; and Title 23, Code of Federal Regulations, part 777, regarding mitigation of impacts to wetlands and natural habitats. The Department of Transportation routinely coordinates highway projects with the FWS, which may impact property interests held by the FWS. The property impacts may be in the form of easements that encumber the subject property or may be in the form of fee title property owned outright by the FWS.

### **State Laws and Procedures**

Chapter 20.1-02 provides the statutory provisions for the Game and Fish Department. Section 20.1-02-17 was enacted in 1973 to provide state assent to the Wildlife Restoration Act, subject to the conditions of Section 20.1-02-17.1. Section 20.1-02-17.1, also enacted in 1973, provided the procedures and conditions for land acquisitions for wildlife and fish restoration under the Wildlife Restoration Act. Section 20.1-02-18, enacted in 1973, gives the state's conditional consent to the United States' acquisition of land or interests in land for migratory bird reservations, subject to gubernatorial consent. Section 20.1-02-18.1, enacted in 1977, requires the submission of proposed federal wildlife area acquisitions to the board of county commissioners of the county or counties where the land is located, requires an opportunity for public comment, and requires an impact analysis before the acquisition may be approved. Section 20.1-02-18.2, enacted in 1977, allowed landowners to negotiate the terms of leases, easements, and servitudes for wildlife production purposes. Under the section, as originally enacted, easements terminated upon the death of the landowner or the transfer of ownership. However, the section was amended in 1985 to remove the requirement that an easement terminates upon the death of a landowner or upon change of ownership. The section also was amended in 1985 to require the duration of an easement for a waterfowl production area acquired by the federal government and consented to by the Governor or appropriate state agency after July 1, 1985, to be limited to 50 years. Section 20.1-02-18.3, enacted in 1981, prohibited the United States from acquiring land or interests in the state for migratory bird reservations, and prohibited the Governor from approving acquisitions with money from the migratory bird conservation fund until December 31, 1985, or until the date a management plan, jointly prepared by the Secretary of the Interior and the Governor, for the land was approved by the Legislative Assembly and the Governor.

Chapter 47-05 provides statutory provisions relating to servitudes (easements) in the title on property. Section 47-05-02.1, enacted in 1977 to limit the duration of wetland easements, established conditions governing easements, servitudes, and other restrictions on the use of real property and restricted easements to a duration of 99 years. The section was amended in 1985 to limit easement durations for waterfowl production areas acquired by the federal government, and consented to by the Governor after July 1, 1985, to 50 years. The section was amended again in 1991 to limit the duration of wetland reserve program easements acquired by the federal government under the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, to 30 years. However, in *North Dakota v. United States*, 460 U.S. 300 (1983), the United States Supreme Court found the provisions of Section 47-05-02.1 which purport to limit wetland easements to a term of 99 years may not be applied to wetland easements acquired by the United States under gubernatorial consents previously given. Since the FWS still was acquiring wetland easements under the consents given in 1983, the state was not allowed to limit the duration of the pre-1976 easements. After the decision in *North Dakota v. United States*, it appears the duration of wetland easements under consents given before 1976 are perpetual, the duration of easements for waterfowl production areas consented to by the Governor or an appropriate state agency after July 1, 1985, is 50 years, and the duration of wetlands reserve program easements acquired pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, is 30 years.

Section 47-05-02.1 was amended by House Bill No. 1399 (2013) to provide waterfowl production area easements exceeding 50 years or which purport to be perpetual may be extended by negotiation between the owner of the easement and the owner of the servient tenement. The amendment also provided waterfowl production easements exceeding 50 years or purporting to be perpetual, which are not extended by negotiation, are void. The legislative history of the bill indicated the bill was intended to provide a method of resisting the federal government's policy of perpetual waterfowl easements.

Procedures have been developed to assist in both the replacement of the natural or ecological impacts and the replacement of property value impacts for the loss of property. The Department of Transportation practices avoidance and minimization of impacts to FWS property interests while undertaking a project. The project development activities include early and ongoing coordination in a manner that keeps both parties informed of the project, impacts, and mitigation to occur.

According to DOT, the process of undertaking a road construction project of state highways that may impact a FWS property interest includes numerous steps such as: surveying the field to determine where a project needs to occur; researching necessary property titles; submitting a solicitation letter to the FWS indicating the intent to start a project and requesting whether the FWS has an interest that will be impacted; receiving information for a contact person within the FWS for the project; establishing a memorandum of understanding between DOT and the FWS; completing an environmental impact statement for the project necessary to remain in compliance with federal requirements, including identified property interests and proposed mitigation for unavoidable impacts that may include an exchange of property; and obtaining a special use permit issued by the FWS to DOT to begin the project. According to DOT, the process of determining where to initiate a project, planning the project, and mapping can take up to a year. Project design can take approximately 6 months, and processing and receiving a special use permit for the project from the FWS can take up to 3 months after the project plan is in place and the permit application has been drafted. If a DOT construction project will be located within a FWS easement area but will not impact a delineated wetland within the easement area, no mitigation or wetland exchange process is necessary; however, the project requires a FWS special use permit to proceed.

In addition to working with the FWS, DOT is required to work with the State Engineer, local flood plain managers, the Federal Highway Administration, and the Army Corps of Engineers when undertaking road construction projects where wetlands are impacted. According to DOT, 41 special use permit applications for projects have been granted by the FWS and processed since 2009, and easement exchanges were required in 31 special use permit applications.

### **Legal Challenges to State Law**

In 1979, the United States brought an action against the state seeking declaratory judgment that the state's statutes restricting the acquisition of land for migratory bird refuges and waterfowl production areas enacted in 1977 were unconstitutional. In *North Dakota v. United States*, the United States Supreme Court ruled the consent of the Governor required for land acquisition previously given cannot be revoked at-will by an incumbent governor. The Court further held the state may not revoke its consent based on noncompliance with the conditions set forth in the 1977 legislation. The Court held to the extent the 1977 legislation authorized landowners to drain wetlands that had increased in size after the granting of the easement contrary to the terms of the easement agreement, it was hostile to federal law and interests and could not be applied to easements under previously given gubernatorial consents. For the same reason, the statutes limiting perpetual easements to 99 years were found to be unconstitutional as applied to wetlands to which acquisitions by the United States had been approved previously under prior gubernatorial consent. The Court held North Dakota may not restrict the acquisition of easements under previously given gubernatorial consents.

In *United States v. Johansen*, 93 F.3d 459, 463 (8th Cir. 1996), two brothers were charged with violating the terms of an easement agreement entered in the 1960s by draining wetlands on their property after being denied permission by the FWS. The brothers argued only the original number of acres contracted for in the easement summaries were covered by the agreement, not the wetland areas that expanded after a rainy season. The United States argued the easement summaries were not a part of the official recorded easement, the recorded easements described and covered larger tracts of land, and the easements encompassed all wetlands on an encumbered parcel. The Eighth Circuit Court of Appeals held federal wetland easements are limited to the wetland acreage provided in the easement summaries because the easement is limited to wetland acres only. The court of appeals based its opinion on the United States Supreme Court decision in *North Dakota v. United States* and the district court decision in *United States v. Vesterso*, 828 F.2d 1234 (8th Cir. 1987). The court of appeals held the FWS acquired an easement and paid the landowner based on the wetland easement acreage summary sheet. Further, the defendant must have had knowledge the parcel was encumbered by a wetland easement, and the drained wetlands must be part of the easement summary. The court of appeals, interpreting the *Vesterso* decision, also noted the United States must prove beyond a reasonable doubt that identifiable, covered wetlands, as existing at the time of the easement's conveyance and described in the easement summary, were damaged and the defendant knew the parcel was subject to a federal easement.

Pre-1976 waterfowl production area easements describe the entire parcel of land as subject to an easement; however, courts have held the FWS only purchased the right to prohibit the draining, filling, and burning of wetlands on the property when the easement was conveyed. Nonwetland areas on the property are not covered by the easements. However, following the decision in *United States v. Johansen*, there still are disputes regarding the acreage covered by FWS easements.

## **Testimony**

### **Department of Agriculture**

The committee received testimony from the Agriculture Commissioner, regarding FWS easements in North Dakota. Testimony indicated concerns exist over the perpetual nature of these easements. Communication with the Department of Interior and the FWS has occurred to delineate the wetlands and buffer zones with easements. North Dakota landowners have struggled to implement projects that would improve their lands because many original maps differed from the outdated or inaccurate maps the FWS was using. Additionally, through the course of the current FWS wetland delineation process, an appeals process was implemented so landowners have a path forward if the landowner has a reason to question the delineation.

### **United States Fish and Wildlife Service**

The committee received testimony from a representative of the FWS, Arrowwood Wetland Management District. Testimony indicated landowners have the right to graze, hay, plow, plant, and farm on FWS easement areas without restriction when the areas are naturally dry. All easements acquired by the FWS are subject to valid existing rights of way, and if a political subdivision is conducting a road construction project in an area covered by a right of way, the FWS easement is subject to the project even if the project results in the draining or filling of a protected wetland in the right-of-way area. The Fish and Wildlife Service only has jurisdiction when a road construction project is outside a right-of-way area, the project is within the boundaries of an easement tract, and a protected wetland will be impacted by the project. Road construction projects often are subject to federal requirements under Section 404 of the Clean Water Act and Executive Order 11990 regarding the protection of wetlands. Even if a FWS easement is not impacted by a project, other federal requirements often are applicable if the project involves federal highways and federal funding. The use of wetland banks will help mitigate the impacts on FWS easement interests by road construction projects.

### **Department of Transportation**

The committee received testimony from a representative of DOT. The Department of Transportation practices avoidance and minimization of impacts to property interests encountered in the development of a project. The project development activities include early and ongoing coordination in a manner that keeps both parties informed of the project, impacts, and mitigation. Sometimes a highway project may impact property interests held by the FWS. The property interests may be in the form of easements or in the form of fee title. Agreements and procedures have been developed to efficiently address both the replacement of the natural or ecological impacts (wetland impacts), and the replacement of property interest or land value for the loss of property. The Department of Transportation maintains banks for both wetland and grassland impacts and property interests which allows for exchanges based on credit values. Wetland impacts usually are mitigated in DOT developed banks at a cost of about \$15,000 to \$22,000 per credit. Land values are determined by an appraisal. A memorandum of understanding between DOT and the FWS was executed in 2012 to help facilitate mitigation and exchange of these wetland and property interest impacts. The Department of Transportation works with the FWS to mitigate impacts to protected wetland easements when undertaking state highway road projects, but other projects involving county or township road projects typically are addressed by the county or township.

### **North Dakota Grain Growers Association**

The committee received testimony from a representative of the North Dakota Grain Growers Association. Concerns were raised regarding the impacts of FWS easements on North Dakota taxpayers and infrastructure. Almost every county in the state is subject to and impacted by FWS wetland easements. It was suggested the Legislative Assembly enact a moratorium on the acquisition of wetland easements by the FWS until the full impact of existing easements on landowners, road projects, and infrastructure can be determined and resolved.

### **North Dakota Farm Bureau**

The committee received testimony from a representative of the North Dakota Farm Bureau. Support was offered for the elimination of perpetual wetland easements when the land is sold and the property title is transferred, and the establishment of a buyout program for FWS easements.

### **Ward County Highway Department**

The committee received testimony from the Ward County Highway Department. Information and data were provided regarding the process of completing road construction projects in relation to impacted FWS easements.

### **Legal Professionals**

The committee received testimony from an attorney at the Rinke Noonan Law Firm in St. Cloud, Minnesota. Testimony indicated the firm has been involved in over 200 easement map appeals relating to new maps issued by the FWS delineating wetland easement interests conveyed before 1976. The Fish and Wildlife Service creates an easement summary sheet at the time an easement is conveyed to record payments made to landowners. Many landowners were unaware of the easement summary sheets and did not agree to the acreage recorded on the sheets by the FWS. Courts have limited easements to the maximum number of wetland acres listed on FWS easement summary sheets. Landowners are concerned the FWS is claiming smaller areas of acreage as wetland areas protected by the easements on the new maps, while not claiming larger more established bodies of water, which are clearly visible on the maps as being protected. The United States can prosecute an individual for misdemeanor offenses or gross misdemeanor offenses if the government believes the individual has violated the terms of an easement agreement. There is not a duty to maintain a protected easement area, but a landowner may not impact the easement by draining, filling, or burning the area without permission from the FWS. An easement applies to areas existing at the time the easement was conveyed by the landowner and may not fluctuate due to increased rainfall. If an easement area increases due to rainfall after the easement was conveyed, the landowner is allowed to drain and reduce the area to the original wetland boundary area. A landowner has the right to drain larger bodies of water if the water area is not protected by the FWS. The Fish and Wildlife Service likely excludes larger bodies of water from protection under the new wetland area easement maps because larger areas are very difficult to drain. Excluding larger bodies of water allows the FWS to claim smaller areas as being protected while allowing the larger bodies of water to exist on the property unprotected, which does not count toward the maximum number of protected acres. If a landowner does not object to the new maps delineating the wetland areas covered by the perpetual easements within 40 days of receiving the map, the map is considered final for FWS enforcement purposes.

### **Ducks Unlimited**

The committee received testimony from a representative of Ducks Unlimited. Support was offered for clear mapping of easement areas and the establishment of an appeals process for landowners when disagreements exist with the FWS.

### **Landowner Rights Easement Act**

The committee received an update on HR 7021, which is commonly referred to as the Landowner Rights Easement Act. The Act was introduced in the United States House of Representatives on March 9, 2022. The Act prohibits the Department of the Interior from entering a conservation easement with a term of more than 50 years. The Act sets forth requirements for the renegotiation of a conservation easement at the request of an owner of land subject to a conservation easement that has been in effect for longer than 50 years or was put into effect before 1977 without the creation of an official corresponding map. The Act requires the Department of the Interior to notify such an owner of the owner's right to submit a request for renegotiation of the conservation easement.

### **Committee Considerations**

The committee expressed opposition to how FWS easements operate in North Dakota. However, because FWS easements are governed by federal law, the committee acknowledged the state's options for reform are limited. Several committee members expressed support for the federal Landowner Rights Easement Act and believe the Act would solve several of the issues raised in committee deliberation. A resolution to Congress urging the passage of the Act was discussed. However, no committee members moved for the creation of a resolution.

### **Conclusion**

The committee makes no recommendation regarding its study of the fiscal and safety impacts of FWS easements in North Dakota on the DOT, Department of Agriculture, and counties.

## **ADVISORY COMMITTEE ON SUSTAINABLE AGRICULTURE REPORT**

The committee received a report, pursuant to Section 4.1-01-11, from the ACSA on the status of the committee's activities. The report indicated most members of the ACSA are appointed by the Agriculture Commissioner. The committee members include the chairpersons of the House and Senate Agriculture Committees; the Commissioner of Commerce; agriculture producers; agriculture industry representatives and marketers; as well as a member of the minority party appointed by the Legislative Management Chairman if both houses of the Legislative Assembly are controlled by the same party. The committee is directed to examine the sustainability of various conventional farming practices and modern technology-based production practices; to examine the efficiency of various production practices, including those that promote efficiency, human health, and economic opportunity; to advise the Agriculture Commissioner on sustainable certification program marketing and packaging; and to consider existing standards of international private sector certifying groups to assess whether such standards may be applicable to a potential certification program in this state.

The Advisory Committee on Sustainable Agriculture met in 2009 and 2010. The committee determined the word "sustainability," as referenced in Section 4.1-01-11, would need to be defined and a certification program would not be beneficial to most North Dakota producers. Specifically, the program only would benefit a small number of producers and likely would be cost-prohibitive to state producers. Accordingly, the implementation of a sustainable certification program was not recommended by the ACSA.

During the 2021 legislative session, Section 4.1-01-11 was amended to change the Agriculture Commissioner's duty to appoint an advisory committee from a mandatory duty to a permissive power. This modification provided flexibility for the ACSA to convene and meet at any time in the future. The report indicated the flexibility to continue to appoint the ACSA still may be beneficial, but the committee is not currently necessary due to a lack of participation.

### **Committee Considerations**

A committee member presented a bill draft to repeal Section 4.1-01-11, regarding the ACSA. The committee was informed the ACSA has not met since 2010 and is no longer necessary.

### **Recommendation**

The committee recommends a bill draft [23.0015.01000] to repeal the ACSA.

## **FEDERAL ENVIRONMENTAL LAW IMPACT REVIEW COMMITTEE REPORT**

The committee received a biennial report, pursuant to Section 4.1-01-21.1(8), from the FELIRC. The report indicated FELIRC was created by the 64<sup>th</sup> Legislative Assembly with the directive to review federal environmental legislation and regulations that are or could be unnecessarily detrimental to the agricultural and energy sectors. The majority of FELIRC funding continues to be used for litigation surrounding the Waters of the United States (WOTUS) ruling. The Federal Environmental Law Impact Review Committee also has proactively funded studies on threatened and endangered species and habitat to gather sound, scientific data before a species is listed as endangered. Of significant note, the preliminary findings from the study on bats has been used in early stages of species and habitat assessments being undertaken by the FWS.

The Federal Environmental Law Impact Review Committee was expanded during the 66<sup>th</sup> Legislative Assembly to include a new directive with the Environmental Impact Mitigation Fund (EIMF). The committee membership was increased and charged with the responsibility of aiding landowners with the mitigation of agricultural land impacted by development. The Environmental Impact Mitigation Fund has a continuing appropriation that is separate from the fund for FELIRC. The Environmental Impact Mitigation Fund is triggered if there is a deposit made by a company to assist with mitigation efforts. The 67<sup>th</sup> Legislative Assembly split the mitigation fund deposits between the EIMF and the FELIRC fund. The Environmental Impact Mitigation Fund may be used for consultation with environmental scientists or engineers for relevant services to implement mitigation impacts to agricultural operations where no consideration was given before.

The Chairman of FELIRC is the Agriculture Commissioner. The membership of FELIRC includes the Governor; the House and Senate Majority Leaders; a member of the minority party; representatives from the six different private agriculture groups; the Chairman of the Public Service Commission; the State Engineer; the Director of the Game and Fish Department; the Director of the Department of Transportation; the Director of the Department of Environmental Quality; representatives from both an investor-owned utility company and the North Dakota Rural Electric Cooperatives Association; and two representatives from the energy community. Over the past 5 years, over \$8 million have been appropriated to the FELIRC fund. In that time, FELIRC has had total expenditures and future obligations of approximately \$2.5 million. Of that amount, approximately \$1.5 million has been expended for litigation expenses relating to federal WOTUS regulations. Another \$800,000 have been provided to the North Dakota State University (NDSU) to fund endangered species studies. Currently, the FELIRC has approximately \$5.65 million in uncommitted funds. The report indicated the current federal administration is attempting to redefine WOTUS and continues to move ahead with a federal rule-making process in an attempt to dramatically increase federal jurisdiction over all state lands and state waters. If

the Environmental Protection Agency and Army Corps of Engineers enact such a federal administrative rule, existing available FELIRC funds will be necessary to pay for further litigation.

## **STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION REPORT**

The committee received a report, pursuant to Section 15-12.1-17(8), from SBARE regarding its annual evaluation of research and extension activities and expenditures. The report indicated the State Board of Agricultural Research was established by the Legislative Assembly in 1997. The board was responsible for budgeting and policymaking associated with the supervision of the North Dakota Agricultural Experiment Station. The law was amended in 1999 to include responsibility for the NDSU Extension Service and the board's name was changed to SBARE. The duties and functions of SBARE are outlined in Section 15-12.1-17. As required by Section 15-12.1-17, SBARE develops a biennial budget request by receiving information from stakeholders. Beginning in November 2021, SBARE received over 90 messages from stakeholder groups, citizens, and other interested parties sharing thoughts and concerns about agricultural research and extension efforts in the state. The prioritization process includes evaluating, ranking, and prioritizing stakeholder input. Final rankings are organized into three categories: Agricultural Experiment Station programmatic needs; NDSU Extension programmatic needs; and capital improvement projects. The State Board of Agricultural Research and Education will publish the findings of the prioritization process in March 2023.

## **DEPARTMENT OF TRANSPORTATION - NETWORK COMPANIES REPORT**

Prior to its repeal in August 2021, Section 39-34-05 required transportation network companies to report information from the prior 6 months to DOT on June 15 and December 15 of each year. In addition, the section required DOT to report the information collected each biennium to the Legislative Management. The committee received the biennial report from DOT of data received before Section 39-34-05 was repealed. The report indicated between June 1, 2020, and November 30, 2020, Uber operated in all political subdivisions throughout the state, while Lyft operated only in Alexander, Belfield, Bismarck, Burlington, Casselton, Coleharbor, Dickinson, Emerado, Fargo, Glen Ullin, Glenburn, Grand Forks, Grand Forks Air Force Base, Gwinner, Harding, Harwood, Hebron, Horace, Larimore, Mandan, Manvel, Mapleton, Maxbass, Menoken, Minot, Minot Air Force Base, Mott, New Leipzig, New Salem, Oxbow, Pick City, Portal, Ross, South Heart, St. Michael, Stanley, Surrey, Taylor, Thompson, Tioga, Trenton, Valley City, Warren, Watford City, West Fargo, Williston, and Wilton. Three accidents were reported to Uber during the passenger onboard stage. Four accidents were reported to Lyft during the passenger onboard stage. The number and types of traffic violations and any other violations reported to Uber during the passenger onboard stage included one count of physical altercation and three counts of inappropriate driver conduct. The number and types of traffic violations and any other violations reported to Lyft during the passenger onboard stage included 15 traffic violations and no other violations.

## **DEPARTMENT OF TRANSPORTATION ROAD TRAINS AND LONG COMBINATION VEHICLES REPORT**

On or before August 1, 2022, DOT was required to present the findings and recommendations of its study, mandated by Section 1 of Senate Bill No. 2026 (2021), on pilot projects on the feasibility and impact of long combination vehicle operations on North Dakota roadways. The Department of Transportation also was required to report, as requested, on the road train pilot program.

The committee received a verbal and a written report relating to the road train and long combination vehicle pilot project. Several representatives of DOT and the Upper Great Plains Transportation Institute discussed the pilot project. State and county highways were approved for use in the pilot program. Congress was not willing to allow long combination vehicles on the federal interstate highway system. Stakeholders indicated they were not interested in participating in a long combination vehicle pilot program unless they had access to the national network. Due to the absence of participating trucking firms, a pilot long combination vehicle study was not completed. The current regulatory framework was discussed, noting variations between North Dakota and surrounding states and provinces in addition to the overarching federal regulations on the national network. The federal regulations on the national network restricting the potential routes in the state were cited as a limiting factor for participation in the pilot study. If Congressional action were to alter existing truck size and weight regulations on the national network, a pilot study could proceed with a greater likelihood of participation from the trucking industry. Throughout the planning and advisory committee meeting process, interest in a double 53-foot trailer configuration was expressed on multiple occasions. This configuration is legal on limited routes in Manitoba and Saskatchewan, and it is assumed the configuration would result in cost savings for shipping companies. Specific impacts to highways and bridges are unknown because of a lack of detailed information on axle spacing and weights. The Department of Transportation is considering options to allow double 53-foot trailers on the national network. Department of Transportation representatives are attempting to work with the Secretary of Transportation, Pete Buttigieg, and North Dakota's federal delegation to include the national highway system in future pilot projects.

# 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 Representatives Don Vigasaa (Chairman), Bert Anderson, Larry Bellew, Tracy Boe, Joshua A. Boschee, Mike Brandenburg, Jeff Delzer, Michael Howe, Keith Kempenich, Kim Koppelman, Gary Kreidt, Scott Louser, Bob Martinson, Lisa Meier, Alisa Mitskog, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Chet Pollert, Mark Sanford, Mike Schatz, Jim Schmidt, Randy A. Schobinger, and Michelle Strinden and Senators Brad Bekkedahl, Kyle Davison, Dick Dever, Robert Erbele, Joan Heckaman, Kathy Hogan, David Hogue, Ray Holmberg, Jerry Klein, Karen K. Krebsbach, Tim Mathern, Erin Oban, Dave Oehlke, Nicole Poolman, David S. Rust, Ronald Sorvaag, Terry M. Wanzek, Rich Wardner

Senator Oban resigned on March 27, 2022, and Senator Holmberg resigned on June 1, 2022. Senator Kathy Hogan became a member of the Budget Section on March 29, 2022.

The following duties assigned to the Budget Section by law or by Legislative Management directive were acted on or reports were received during the 2021-22 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. **Department of Trust Lands investment performance (Section 15-02-08.1)** - This section requires the Department of Trust Lands to provide annual reports to the Budget Section regarding the investment performance of funds under its control.
3. **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.
4. **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.

5. **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.
6. **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.
7. **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.
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. **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.
10. **North Dakota National Guard service member, veteran, family, and survivor support program (Section 37-03-18)** - This section requires 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.
11. **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.
12. **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.
13. **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.
14. **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.
15. **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.
16. **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.
17. **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.
18. **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.
19. **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.
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. **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. The Budget Section may amend any request that exceeds \$3 million and the amended request is deemed approved by the Emergency Commission. The total amount of requests that may be approved during a biennium under this section, excluding Federal Highway Administration emergency relief and federal disaster and emergency recovery funding, may not exceed \$50 million.
22. **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. The Budget Section may amend any request that exceeds \$3 million and the amended request is deemed approved by the Emergency Commission. The total amount of requests that may be approved during a biennium under this section may not exceed \$20 million.
23. **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.
24. **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.
25. **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.
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. **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.

28. **Consider specific criteria for actions, projects, and transfers (Section 54-35-02.9)** - This section requires the Budget Section to review specific criteria when considering an item before the Budget Section.
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. **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.
31. **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.
32. **Federal funds report** - Receive a report from the Legislative Council staff in the fall of 2022 on the status of the state's federal funds receipts for the current biennium and estimated federal funds receipts for the subsequent biennium.
33. **Agriculture research and related entities FTE positions (Section 8 of Senate Bill No. 2020 (2021))** - 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.
34. **Report from the Governor on federal and other funds received (Section 3 of House Bill No. 1001 (2021))** - This section requires the Governor's office to provide a report to the Budget Section regarding the source, amount, and purpose of any additional income from other funds received from a source that exceeds \$150,000.
35. **Report regarding any transfers between line items in excess of \$50,000 (Section 8 of House Bill No. 1012 (2021))** - This section requires Department of Human Services (DHS) to report to the Budget Section after June 30, 2022, on any transfers in excess of \$50,000 made during the 2021-23 biennium between line items within subdivisions 1, 2, and 3 of House Bill No. 1012.
36. **Report regarding any transfers between line items in excess of \$50,000 (Section 9 of House Bill No. 1012 (2021))** - This section requires DHS to report to the Budget Section after June 30, 2022, on any transfers in excess of \$50,000 made during the 2021-23 biennium from line items within subdivisions 1, 2, and 3 to line items in subdivision 4 of House Bill No. 1012.
37. **Substance use disorder program (Section 62 of House Bill No. 1012 (2021))** - This section requires DHS to provide quarterly reports to the Budget Section regarding the status of the substance use disorder voucher treatment program.
38. **General fund transfers to highway fund (Section 13 of House Bill No. 1015 (2021))** - This section requires the Department of Transportation to provide quarterly reports regarding the use of funds transferred from the general fund to the highway fund as authorized in the section.
39. **Main Research Center capital project priority (Section 11 of Senate Bill No. 2020 (2021))** - This section requires the Director of the NDSU Main Research Center to report to the Legislative Management regarding priority capital projects and other expenses that may be eligible for funding from the federal State Fiscal Recovery Fund allocated to the state under the federal American Rescue Plan Act of 2021.
40. **Intermodal facility grant certification (Section 1 of Senate Bill No. 2245 (2021))** - This section requires OMB to certify that funding appropriated from the federal Coronavirus Capital Projects Fund may be used for an intermodal facility grant before providing the grant.
41. **Federal Coronavirus Capital Projects Fund (various bills)** - These bills require OMB to consult with the Budget Section to determine if capital projects comply with guidelines regarding the use of federal coronavirus capital projects funds.

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 2022 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.

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 2021-22 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. **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.

13. **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.
14. **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.
15. **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.
16. **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.
17. **Purchases of "put" options (Section 54-44-16)** - This section requires OMB to report any purchases of "put" options to the Budget Section.
18. **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.
19. **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.
20. **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.
21. **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.
22. **Federal block grant hearings (Senate Concurrent Resolution No. 4001 (2021))** - This resolution authorizes the Budget Section, through September 30, 2023, to hold any required legislative hearings for federal block grants.
23. **State Water Commission expenditure of additional amounts that become available in the resources trust fund in excess of the 2021-23 biennium appropriation (Section 3 of House Bill No. 1020 (2021))** - This bill requires Budget Section approval for State Water Commission expenditure of funds that become available in the resources trust fund in excess of 2021-23 biennium appropriations.
24. **State parks gift fund approval (Section 55-08-07.2)** - This section requires the Parks and Recreation Department to obtain Emergency Commission and Budget Section approval for any expenditure from the state parks gift fund in excess of \$50,000 if the funding is not designated for a specific purpose.

### OFFICE OF MANAGEMENT AND BUDGET 2019-21 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 2019-21 biennium:

Unobligated general fund balance - July 1, 2019		\$65,000,000
Balance obligated for authorized carryover from the 2017-19 biennium		128,664,231
Total beginning general fund balance - July 1, 2019		\$193,664,231
Add		
General fund collections		5,751,904,322
Total estimated revenues available		\$5,945,568,553

Less		
Legislative appropriations - One-time	(\$48,639,068)	
Legislative appropriations - Ongoing	(4,794,924,098)	
Authorized carryover from previous biennium	(128,664,231)	
Supplemental and deficiency appropriations	(123,140,000)	
Unspent authority	337,679,612	
Other adjustments	2,091	
Total appropriations		(4,757,685,694)
Estimated ending general fund balance - June 30, 2021 - Before transfers and adjustments		\$1,187,882,859
Transfer to budget stabilization fund <sup>1</sup>		0
Other adjustments		(65,529,514)
Ending general fund balance - June 30, 2021		\$1,122,353,345
<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.		

### 2019-21 Biennium General Fund Turnback

The Budget Section received a report from OMB on the 2019-21 biennium agency unspent general fund appropriation amounts (turnback). Unspent 2019-21 biennium general fund appropriation authority totaled approximately \$337.7 million. Major unspent general fund appropriations include:

- The Department of Public Instruction (DPI) had turnback of \$61.2 million, which was a result of reduced state school aid spending due to lower than anticipated enrollment growth.
- The Department of Human Services had turnback of \$179.2 million, which primarily related to lower than anticipated cost and caseload levels and the enhanced COVID-19 federal medical assistance percentage.
- The Highway Patrol had turnback of \$21.2 million and DOCR had turnback of \$46.8 million, which primarily related to the use of federal coronavirus relief funds for employee salaries.

### 2019-21 Biennium Capital Construction Carryover

The Budget Section received a report from OMB on 2019-21 biennium capital construction carryover. The Office of Management and Budget reported funding of \$105.4 million for the 2019-21 biennium was continued into the 2021-23 biennium. Of the total amount, \$80 million was for the continuation of funding authority for the statewide interoperable radio network project.

### 2021-23 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 2021-23 biennium. The following is a summary of the status of the state general fund, based on actual revenue collections through August 2022, and reflecting the 2021 legislative forecast for the remainder of the 2021-23 biennium:

Unobligated general fund balance - July 1, 2021		\$1,122,353,345
Balance obligated for authorized carryover from the 2019-21 biennium		72,766,911
Total beginning general fund balance - July 1, 2021		\$1,195,120,256
Add		
General fund collections to date	\$3,145,739,918	
Remaining forecasted general fund collections	1,495,329,366	
Total estimated general fund collections		4,641,069,284
Total estimated revenues available		\$5,836,189,540
Less		
Legislative appropriations - One-time	(\$114,923,493)	
Legislative appropriations - Ongoing	(4,878,033,837)	
Authorized carryover from previous biennium	(72,766,911)	
Contingent appropriation for Theodore Roosevelt Presidential Library	(17,500,000)	
2021-23 biennium authority spent in 2019-21 pursuant to emergency clause	100,000	
Total appropriations		(5,083,124,241)
Estimated ending general fund balance - June 30, 2023 - Before transfers		\$753,065,299

Transfer to budget stabilization fund <sup>1</sup>	0
Estimated ending general fund balance - June 30, 2023	\$753,065,299
<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 2021-23 biennium.	

The Budget Section was informed as of June 30, 2022, the balance in the budget stabilization fund was \$717.4 million. As of August 31, 2022, the balance in the legacy fund was \$8.0 billion, the balance in the foundation aid stabilization fund was \$439.9 million, the balance in the tax relief fund was \$294.8 million, and the unobligated balance in the strategic investment and improvements fund was \$731.9 million.

### 2021-23 Biennium Revised Revenues and Preliminary 2023-25 Revenues

The Budget Section received updates on OMB's projected 2021-23 biennium revised revenue forecast and preliminary 2023-25 revenue forecast. Items noted include:

- Sales and use tax collections are estimated to increase from \$980 million in fiscal year 2022 to \$1.11 billion in fiscal year 2024.
- Individual income tax collections are estimated to decrease from \$465.5 million in fiscal year 2021 to \$414.5 million in fiscal year 2023 due to a tax credit approved by the 2021 Legislative Assembly. If the tax credit had not been approved, fiscal year 2023 collections would be approximately \$521.5 million.
- Oil prices are estimated to be \$70 per barrel in fiscal year 2024 and \$65 per barrel in fiscal year 2025. Oil production is estimated to remain at approximately 1.1 million barrels per day through fiscal year 2025.

### 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 2021</b>		
Department of Commerce	Temporary workload increase	\$4,500
Department of Commerce	Temporary workload increases	\$18,614
Department of Human Services	Temporary workload increase	\$665
Council on the Arts	Temporary workload increases	\$7,250
State Historical Society	Temporary workload increase	\$1,633
Public Employees Retirement System	Temporary workload increase	\$1,500
Judicial branch	Incorrect job classification	\$16,302
Department of Human Services	Temporary workload increase	\$614
Department of Human Services	Temporary workload increase	\$864
<b>September 2021</b>		
North Dakota Vision Services - School for the Blind	Teachers working additional hours for summer contract	\$19,565
State Department of Health	Equity adjustment for promotion	\$914
Department of Human Services	Adjustment for incorrect pay rate	\$6,244
Department of Human Services	Equity increase	\$798
Department of Human Services	Workload increases	\$1,956
Department of Labor and Human Rights	Temporary workload increase	\$1,000
Department of Corrections and Rehabilitation	Shift differential pay	\$800
Council on the Arts	Temporary workload increases	\$7,750
State Fair	Workload increase	\$703
Highway Patrol	Reduction in force	\$53,829
Bank of North Dakota	Reduction in force	\$26,855
<b>December 2021</b>		
Legal Counsel for Indigents	Retention pay	\$2,100
Retirement and Investment Office	Workload adjustments	\$2,847
Department of Human Services	Promotional increases	\$2,047
Department of Human Services	Equity increase	\$672
Department of Human Services	Temporary workload increases	\$1,079
Bank of North Dakota	Reduction in force	\$29,305
<b>March 2022</b>		
Department of Career and Technical Education	Correct compensation errors	\$92,311
Department of Human Services	Temporary workload adjustment	\$4,779
Attorney General	Retroactive workload adjustment	\$1,925

Agency	Description	Amount
Department of Human Services	Retroactive recruiting and retention compensation adjustments	\$65,079
Department of Human Services	Retroactive equity increases	\$14,004
Department of Human Services	Retroactive promotion increases	\$2,971
Securities Department	Retroactive increase in responsibilities	\$667
Adjutant General	Retroactive equity increases	\$2,369
<b>June 2022</b>		
Department of Human Services	Workload increases	\$2,787
Department of Human Services	Equity increases	\$4,518
State Library	Temporary workload increase	\$981
Department of Human Services	Temporary workload increases	\$2,584
Securities Department	Workload adjustment	\$1,187
Department of Commerce	Workload adjustment	\$750
Judicial branch	Severance pay	\$26,505
Highway Patrol	Severance pay	\$25,686
<b>September 2022</b>		
North Dakota Vision Services	Additional teacher summer contract days	\$14,979
North Dakota Vision Services	Retired employee contract payout	\$5,164
Department of Environmental Quality	Temporary workload adjustment	\$500
Attorney General	Equity increases	\$4,565
Retirement and Investment Office	Workload adjustments	\$10,044
Department of Human Services	Workload adjustments	\$13,203
Department of Human Services	Retroactive leave payout	\$2,788
Department of Human Services	Shift differential pay	\$577
Department of Corrections and Rehabilitation	Equity increase	\$712

### 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 2021-23 biennium to date through June 2022, approximately \$23.3 million had been received by the state and deposited in the tobacco settlement trust fund. The entire \$23.3 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 \$563.4 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.

### 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 2021</b>		
State Department of Health	September 2021 - September 2022	\$125,000
Department of Human Services	October 2021 - September 2026	\$8,000,000
Department of Human Services	August 2021 - August 2025	\$12,000,000
Department of Human Services	October 2020 - September 2021	\$659,157
Insurance Department	January 2021 - January 2023	\$666,483
Housing Finance Agency	September 2021 - July 2024	\$1,000,000
Adjutant General	October 2021 - September 2023	\$150,000
Department of Agriculture	September 2021 - August 2022	\$500,000
Game and Fish Department	January 2021 - May 2025	\$165,000
<b>September 2021</b>		
Industrial Commission	October 2021 - September 2026	\$25,560
Department of Corrections and Rehabilitation	January 2022 - December 2022	\$200,000
Department of Commerce	30 months from date of award	\$1,000,000
Parks and Recreation Department	September 2021 - May 2027	\$2,714,093
<b>December 2021</b>		
State Historical Society	March 2021 - August 2022	\$75,000

Agency	Time Period of Grant	Amount
<b>March 2022</b>		
Department of Public Instruction	April 2022 - March 2024	\$317,439
Department of Human Services	April 2021 - March 2024	\$1,200,000
Department of Agriculture	September 2022 - August 2023	\$100,000
Department of Agriculture	2 years from time of award	\$700,000
<b>June 2022</b>		
State Department of Health	November 2022 - October 2027	\$2,500,000
State Department of Health	August 2022 - July 2025	\$2,250,000
Industrial Commission	June 2022 - June 2023	\$25,000,000
Game and Fish Department	September 2022 - September 2023	\$96,300
Game and Fish Department	July 2022 - June 2025	\$332,025
Department of Transportation (15 transportation project grants)	June 2022 - September 2029	\$310,531,044
<b>September 2022</b>		
Department of Commerce	October 2022 - August 2024	\$250,000
Department of Commerce	July 2023 - June 2025	\$803,570
Department of Agriculture	November 2022 - June 2025	\$52,500
Game and Fish Department	July 2023 - June 2025	\$5,000,000
Parks and Recreation Department (2 transportation alternative grants)	June 2024 - June 2026	\$1,187,086
Parks and Recreation Department	September 2022 - August 2024	\$27,478
Department of Transportation (5 transportation project grants)	September 2022 - June 2028	\$21,740,000

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 2021</b>		
Governor's office	January 2021 - September 2022	\$2,732,339
Department of Human Services	Through December 2021	\$200,000,000
Department of Human Services	February 2021 - March 2021	\$130,000
Department of Human Services	October 2020 - September 2021	\$649,157
Department of Human Services	October 2020 - September 2021	\$81,300
Game and Fish Department	January 2021 - May 2025	\$165,000
<b>September 2021</b>		
Department of Human Services	October 2020 - September 2021	\$161,690
Industrial Commission	October 2021 - September 2026	\$25,560
Adjutant General	October 2021 - September 2023	\$160,000
<b>December 2021</b>		
Housing Finance Agency	September 2021 - July 2024	\$59,895
Department of Corrections and Rehabilitation	October 2021 - September 2026	\$1,542,174
State Historical Society	March 2021 - August 2022	\$75,000
<b>March 2022</b>		
Department of Human Services	August 2021 - July 2026	\$200,178
Department of Agriculture	September 2021 - August 2022	\$500,000
<b>September 2022</b>		
Industrial Commissioner	May 2022 - June 2023	\$25,000,000
Department of Agriculture	March 2022 - June 2022	\$48,556
Department of Agriculture	September 2022 - August 2023	\$100,000
Department of Agriculture	October 2022 - August 2023	\$52,500
Game and Fish Department	September 2022 - September 2023	\$96,300
Department of Transportation	December 2021 - June 2024	\$1,449,000
Department of Transportation	August 2022 - September 2026	\$19,500,000

### 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 September 2022, OMB reported project variance reports for North Dakota University System projects as of June 30, 2022, as follows:

	<b>Project Authorization</b>	<b>Adjusted Authorization</b>	<b>Variance (Over)/Under Authorization</b>
<b>Projects Specifically Authorized by the Legislative Assembly</b>			
Bismarck State College	\$36,922,561	\$36,922,561	\$0
Dakota College at Bottineau	\$9,345,914	\$9,168,156	(\$177,758)
Dickinson State University	\$8,913,000	\$15,609,000	\$6,696,000
Lake Region State College	\$310,734	\$310,734	\$0
Mayville State University	\$1,600,000	\$1,998,970	\$398,970
Minot State University	\$29,844,462	\$29,844,462	\$0
NDSU Extension Service	\$1,748,000	\$1,748,000	\$0
Forest Service	\$69,010	\$69,010	\$0
North Dakota State University	\$244,000,000	\$257,400,000	\$13,400,000
University of North Dakota	\$309,144,769	\$309,444,769	\$300,000
Valley City State University	\$55,700,000	\$55,700,000	\$0
<b>Projects Approved by the State Board of Higher Education</b>			
Dakota College at Bottineau	\$3,400,000	\$3,400,000	\$0
North Dakota State University	\$4,600,000	\$4,600,000	\$0
University of North Dakota	\$1,100,000	\$1,100,000	\$0
Williston State College	\$11,500,000	\$11,500,000	\$0

## 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 2021-23 biennium pursuant to Section 3 of House Bill No. 1001 (2021). The reports indicated the following additional funds were received by the Governor's office through September 2022:

<b>Source</b>	<b>Amount</b>	<b>Purpose</b>
Yes Every Kid, Inc.	\$5,000	Expenses of Governor's Summit on Innovative Education
National Governor's Association	\$35,000	Support education efforts and the state's social emotional learning network
Dakota Medical Foundation	\$50,000	Expenses of recovery reinvented program
Dakota Medical Foundation	\$60,000	Expenses of recovery reinvented program
Western Dakota Energy Association	\$500	Expenses of Governor's Summit on Innovative Education
Minnkota Power Cooperative	\$1,000	Expenses of Governor's Summit on Innovative Education
Microsoft Corporation	\$2,500	Expenses of Governor's Summit on Innovative Education
Basin Electric Power Cooperative	\$2,500	Expenses of Governor's Summit on Innovative Education
Burgum Foundation	\$5,000	Expenses of Governor's Summit on Innovative Education
Dakota Medical Foundation	\$110,000	Efforts to address addiction issues
National Governor's Association	\$35,000	Efforts to address workforce readiness issues
AT&T	\$1,000	Expenses of Governor's Summit on Innovative Education
Bravera Bank	\$2,500	Expenses of Governor's Summit on Innovative Education
Fenworks, Inc.	\$17,500	Expenses of Governor's Summit on Innovative Education
XTO Energy Inc.	\$10,000	Expenses of Governor's Summit on Innovative Education
Marathon Oil	\$5,000	Expenses of Governor's Summit on Innovative Education
Dakota Medical Foundation	\$65,000 <sup>1</sup>	Expenses of recovery reinvented program

<sup>1</sup>Pursuant to Section 3 of House Bill No. 1001 (2021), the Governor's office received Emergency Commission and Budget Section approval to receive other funds in excess of \$150,000 from a single source.

## **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**

- **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 \$4,284,500 to \$4,609,000 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.

#### **North Dakota State University**

- **Softball indoor facility project** - Pursuant to Section 48-01.2-25, the Budget Section authorized an increase for the NDSU softball indoor facility project authorization from \$2 million to \$2.6 million utilizing additional special or local funds.
- **Football performance complex project** - Pursuant to Section 48-01.2-25, the Budget Section authorized an increase for the NDSU football performance complex project authorization from \$37.2 million to \$50 million utilizing special funds derived from donations.

#### **Mayville State University**

- **Natural gas boiler installation project** - Pursuant to Section 48-01.2-25, the Budget Section authorized the project scope of the Mayville State University natural gas boiler installation project to increase from \$1,600,000 to \$1,998,970 utilizing capital building funds and operating 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 nine projects were authorized in prior bienniums and continued into the 2021-23 biennium.

The report indicated one project, the Carrington Research Extension Center seed cleaning project, was authorized in a previous biennium and continued into the 2019-21 biennium.

## **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 5.80 FTE positions between December 1, 2020, and November 30, 2021, resulting in a total of 244.55 FTE positions as of November 30, 2021.

### **Branch Research Centers and Agronomy Seed Farm**

The branch research centers added 2.60 FTE positions between December 1, 2020, and November 30, 2021, resulting in 110.80 FTE positions as of November 30, 2021. The Agronomy Seed Farm reported no changes in FTE positions were made between December 1, 2020, and November 30, 2021, maintaining a total of 3.00 FTE positions as of November 30, 2021.

### **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 added 5.80 FTE positions between December 1, 2020, and November 30, 2021, resulting in a total of 244.55 FTE positions as of November 30, 2021.

### **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 1.30 FTE positions between December 1, 2020, and November 30, 2021, resulting in a total of 15.15 FTE positions as of November 30, 2021.

### **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, 2020, and November 30, 2021, resulting in a total of 43.88 FTE positions as of November 30, 2021.

## 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 2022 regarding the status of board activities pursuant to Section 15-12.1-17(10).

### Potential Uses of Federal State Fiscal Recovery Funds

The Director of the Main Research Center submitted a report to the Budget Section in June 2022 pursuant to Section 11 of Senate Bill No. 2020 (2021) regarding capital projects that may utilize federal state fiscal recovery funds.

### ADJUTANT GENERAL

#### North Dakota National Guard Service Member, Veteran, Family, and Survivor Support Program

The Budget Section received a report pursuant to Section 37-03-18 regarding the North Dakota 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 2022, the North Dakota National Guard Foundation provided over \$31,000 in fiscal year 2022 to support an ND Cares event, a survivor outreach event, and military youth camps.

### Use of State Disaster Relief Fund

Section 37-17.1-27 requires the Adjutant General to provide reports to either the Appropriations Committees of the Legislative Assembly or the Budget Section regarding the uses of funds from the state disaster relief fund. The Adjutant General provided reports to the Budget Section throughout the interim regarding the uses of funds from the state disaster relief fund.

### 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 57 cities have a renaissance zone, 8 of which have established RFOs. The department reported approximately \$20 million has been invested in RFOs and \$10 million of tax credits have been claimed. The department reported of the \$494,134 remaining tax credits available as of September 2022, \$250,000 has been reserved for the Hope RFO and the remaining credits remain unclaimed.

The department reported the following tax credit summary as of September 2022:

Renaissance Tax Credits	Total Credits Authorized	Total Credits Claimed	Total Credits Available	
			Committed	Uncommitted
Category 1 (0 to 5,000 population)	\$1,043,366	\$628,366 <sup>1</sup>	\$250,000	\$165,000
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	\$10,005,866	\$250,000	\$244,134

<sup>1</sup>Category 1 cities - Casselton (\$37,500), Hazen (\$15,500), Mayville (\$252,650), 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 2021 and September 2022. 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 2021 the total dollar amount of outstanding checks in state fiscal year 2021 decreased by 1.6 percent compared to state fiscal year 2020. The State Treasurer reported the total amount of outstanding checks as of September 2021 was 19,925 with an amount totaling \$7.8 million. The State Treasurer reported 8,282 outstanding checks from fiscal years 2018 and 2019 totaling \$1,024,242 would be transferred to the Department of Trust Lands' Unclaimed Property Division in October 2021.

The State Treasurer reported in September 2022 the total dollar amount of outstanding checks increased by 11 percent from fiscal year 2021 to fiscal year 2022. The State Treasurer reported 4,189 checks totaling \$623,228 issued in fiscal year 2020 will be transferred to the Unclaimed Property Division in October 2022. As of September 2022, there were 21,140 outstanding checks totaling \$8.2 million issued during fiscal years 2020, 2021, and 2022.

## **DEPARTMENT OF TRUST LANDS**

### **State Agency Unclaimed Property**

The Budget Section received a report 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 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. Effective July 1, 2021, Senate Bill No. 2048 (2021) removed the requirement that the Department of Trust Lands provide a report to the Budget Section identifying state agencies with unclaimed property and removed the provision for Budget Section to approve the relinquishment of state agency unclaimed property.

During the 2019-21 biennium the Department of Trust Lands reported its Unclaimed Property Division identified 20 state agencies with unclaimed properties with a total value of \$20,732 as of June 2021. The Budget Section, pursuant to Section 47-30.1-24.1, approved the list of state agencies relinquishing rights to recover unclaimed property.

### **Investment Performance**

The Budget Section received reports from the Department of Trust Lands in September 2021 and September 2022 regarding the investment of assets under the control of the Board of University and School Lands. The department reported as of June 2022, approximately \$7.1 billion of assets were under the control of the board. The net return for the permanent trust funds as of June 30, 2022, was negative 4.99 percent for the prior year compared to a benchmark of negative 6.73 percent, 4.29 percent for the prior 3 years compared to a benchmark of 5.51 percent, and 4.64 percent for the prior 5 years compared to a benchmark of 5.72 percent. As of June 30, 2022, the net return on investments for the strategic investment and improvements fund was negative 2.33 percent for the prior 6 months compared to a benchmark of negative 1.49 percent and negative 2.62 percent for the prior year compared to a benchmark of negative 1.71 percent. In fiscal year 2022, the department paid \$48.8 million, or 80 basis points, of fund management fees to private entities for managing approximately \$6.1 billion of the \$7.1 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 March 2022 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, 2021, the balance of the unemployment trust fund was \$252 million, \$6 million more than the target balance of \$246 million. The average high-cost multiplier for the period was 1.02, 0.02 above the projected target of 1.0.

## **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 8 and 9 of House Bill No. 1012 (2021) and Section 11 of House Bill No. 1506 (2021). Through September 2022, transfers have been made between line items and subdivisions to better align staff with the structure of the department.

### **Substance Use Disorder Voucher Program**

The Budget Section received a report from DHS regarding the status of the substance use disorder voucher program pursuant to Section 62 of House Bill No. 1012 (2021). The report indicated the program received an appropriation of \$15.3 million for the 2021-23 biennium and through June 2022 a total of \$11.9 million of funding was still available for the program.

## **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 April 30, 2022, the market value of the legacy fund was \$8.1 billion. The unaudited fund performance for the year ended March 31, 2022, was negative 6.2 percent compared to a target return of negative 6.13 percent. The board reported that during the 5-year period ended March 31, 2022, the return was 10.10 percent compared to a target return of 9.36 percent.

### **Budget Stabilization Fund**

As of April 30, 2022, the market value of the budget stabilization fund was \$724.4 million. The Legacy and Budget Stabilization Fund Advisory Board reported the unaudited investment returns, net of fees, averaged 2.37 percent during the 5 years ended March 31, 2022, compared to a policy benchmark of 1.89 percent. Unaudited fund performance for the year ended March 31, 2022, net of fees, was negative 4.62 percent compared to a policy benchmark of negative 3.42 percent.

## **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. In September 2021, an application round for the housing incentive fund was held and a total of 16 applications were received. Four projects received funding, including a new 120-unit senior housing facility in Fargo and three rehabilitation projects to preserve 221 units in Grand Forks, Rolla, and Fargo.

## **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 364 fire departments received a total of \$8,994,753 of distributions in 2019 and 2020.

## **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 2022 the maximum operational capacity for male inmates is 1,624 while the maximum operational capacity for female inmates is 224. Both male and female inmate populations were below capacity and the prioritization plan authorized in Section 54-23.3-11 has not been implemented during the 2021-23 biennium.

## **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 2021-23 biennium beginning balance in the fund was \$13.9 million. As of June 30, 2022, the estimated fund balance was \$17.9 million, and the estimated June 30, 2023, balance is \$20.3 million.

## **North Dakota Outdoor Heritage Advisory Board**

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 2022, the board reported the fund has received \$72.1 million of oil and gas tax collections since the inception of the fund. A total of \$73.1 million has been awarded to 205 projects throughout the state.

## **DEPARTMENT OF TRANSPORTATION**

### **Report on Transportation Funding**

The Department of Transportation reported to the Budget Section pursuant to Section 13 of House Bill No. 1015 (2021) regarding transportation funding. As of September 2021, the department reported it has utilized \$30 million of the \$100 million general fund appropriation provided to the department in House Bill No. 1015 to match \$37 million of federal funding to accelerate 13 rural and 12 urban road and bridge projects.

## **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 2023 legislative session. The required public hearing will be held as part of the appropriations hearing for the Department of Commerce during the 2023 legislative session.

### **Recommendation**

The Budget Section recommends a resolution draft 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 68<sup>th</sup> Legislative Assembly through September 30, 2025.

## **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, 2021, and June 30, 2023. The report did not include federal funds received due to COVID-19. The report indicated agencies estimate \$5.0 billion of federal funds will be received during the 2021-23 biennium, \$337.3 million more than appropriated. Agencies estimate \$5.2 billion of federal funds will be received for the 2023-25 biennium, \$226.1 million more than is estimated to be received during the 2021-23 biennium.

The Budget Section reviewed a memorandum on the largest variances by agency for the 2021-23 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 2021-23 biennium relating to federal funds appropriated and federal funds estimated to be received and the major variances estimated for the 2023-25 biennium compared to the 2021-23 biennium.

## **LEGISLATIVE COUNCIL STAFF REPORTS**

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

- *67<sup>th</sup> Legislative Assembly Budget Status Report for the 2021-23 Biennium.* The report provides information on the status of the general fund and estimated June 30, 2023, ending balance, legislative changes to general fund revenues, and legislative appropriation changes.
- *67<sup>th</sup> Legislative Assembly Legislative Changes to State Agency Budgets for the 2021-23 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 2021 session.
- *67<sup>th</sup> Legislative Assembly State Budget Actions for the 2021-23 Biennium.* The report provides information on the 2021-23 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.
- *67<sup>th</sup> Legislative Assembly State Budget Actions for the 2021-23 Biennium Supplement.* The report provides information on revenue changes and appropriations made during the November 2021 special legislative session.
- *Estimated Revenue Sources and Distributions for Major State Funds for the 2021-23 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 2021-23 biennium based on the 2021 legislative revenue forecast.
- *2021-23 Biennium Report on Compliance with Legislative Intent*. The report provides the current status of major budget changes and initiatives approved by the 2021 Legislative Assembly for various agencies.
- *Analysis of State Trust Funds for the 2019-21 and 2021-23 Bienniums*. The report provides the current status of major state trust funds.
- *2021 and 2022 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.

## **OTHER REPORTS**

The Budget Section received other reports, including:

- Theodore Roosevelt Presidential Library - Update on project fundraising - The Theodore Roosevelt Presidential Library Foundation reported it has raised \$100 million for the library project and the foundation has distributed funds to the City of Dickinson and Dickinson State University Heritage Foundation as required by Section 54-07-12.
- Department of Human Services - Integration with the State Department of Health - The Department of Human Services reported the new Department of Health and Human Services will include divisions for public health, medical services, behavioral health, human services, and administrative functions.
- Attorney General - Facility lease - The report provided information regarding cost overruns associated with a facility leased by the Attorney General.
- Industrial Commission - Update on oil and gas development in the state - The Industrial Commission reported oil production in the state was approximately 1.2 million barrels per day in April 2022. The price of oil will significantly affect the level of oil production in the state.
- Department of Emergency Services - Federal disaster reimbursement rate - The Department of Emergency Services reported the federal reimbursement rate for expenses caused by a presidentially declared disaster occurring between January 1, 2020, and December 31, 2021, was increased from 75 to 90 percent. As a result, the state matching rate decreased from 10 to 3 percent and the local matching rate decreased from 15 to 7 percent.
- Department of Transportation - State Fleet Services rates - The Department of Transportation reported State Fleet Services rates charged to state agencies will be increasing for the 2023-25 biennium due to increases in fuel prices and an increase in the cost of purchasing new vehicles.

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

Pursuant to Sections 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 22, 2021, through September 28, 2022:

### **Department of Environmental Quality**

- June 22, 2021, to authorize the department to accept \$400,000 of federal coronavirus relief funds for the 2019-21 biennium and to accept and spend \$750,000 of federal coronavirus relief funds for the 2021-23 biennium from the State Department of Health for wastewater testing.
- December 15, 2021, to increase federal funds spending authority by \$1.2 million in the operating expenses line item to accept and expend passthrough grant funds from the State Department of Health for wastewater testing.
- December 15, 2021, to increase special funds spending authority by \$2,056,000 from Volkswagen settlement funds in the grants line item to pay for grants awarded during the 2019-21 biennium but for which costs were not incurred until the 2021-23 biennium.
- June 28, 2022, to accept and expend federal funds totaling \$1,015,000 for the salaries and wages line item (\$579,110) and operating expenses line item (\$435,890) and to add 4 FTE positions for the Department of Environmental Quality.

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

- June 22, 2021, to transfer \$100,000 from the operating expenses line item to the salaries and wages line item for the 2019-21 biennium to make available a total of \$2.4 million for unemployment insurance payments.

- December 15, 2021, to reauthorize federal funds spending authority for \$1,167,468 of federal governor's emergency education relief funds, for which spending authority expired on June 30, 2021.

#### **Council on the Arts**

- June 22, 2021, to increase 2021-23 biennium special funds spending authority by \$269,000 in the grants line item to accept and spend funds from the Bush Foundation for a Lakota song repatriation project (\$209,000) and from the National Assembly of State Arts Agencies for a tiny press kit project (\$60,000).

#### **Department of Human Services**

- June 22, 2021, to increase 2021-23 biennium special funds spending authority by \$1.7 million in the grants line item to accept and spend federal Elementary and Secondary School Emergency Relief (ESSER) funds from DPI for early childhood programs.
- March 30, 2022, to increase federal funds spending authority by \$158,610 to accept and expend funds for home- and community-based services and assistive technology for a temporary position (\$78,610) to assist home- and community-based services case managers and for a grant (\$80,000) to train individuals to use assistive technology.

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

- September 30, 2021, to accept and spend \$150,000 of federal funds from DPI available from the ESSER Fund in the operating expenses line item to enhance the RUReadyND career exploration website to include a work-based learning module to connect students with employers to facilitate career exploration and planning.
- September 30, 2021, to accept and spend \$200,000 of federal funds from DPI available from the ESSER Fund in the operating expenses line item to market to and recruit students to increase enrollment in career and technical education courses.
- September 30, 2021, to accept and spend \$290,000 of federal funds from the Agriculture Commissioner available from the United States Department of Agriculture in the adult farm management line item to provide tuition assistance for new farmers and ranchers to participate in the adult farm management program.
- June 28, 2022, to increase other funds spending authority by \$250,000 from the insurance regulatory trust fund for expenses relating to legal action taken against a company in noncompliance with law.

#### **Department of Financial Institutions**

- September 30, 2021, is to increase special fund spending authority by \$275,000, from the agency's financial institution regulatory fund, in the operating expense line item for the "building-out" of the Bismarck and Fargo offices.

#### **Highway Patrol**

- December 15, 2021, to increase spending authority from the motor carrier electronic permit transaction fund by \$66,431 for costs to construct an addition to the agency's shooting range that were incurred but not paid in the 2019-21 biennium.

#### **State Historical Society**

- December 15, 2021, to increase federal funds spending authority by \$75,000 to accept and expend American Rescue Plan Act grant funds received through Humanities North Dakota to support general operating costs at historic sites, which includes the cost to fabricate and install interpretive signs at multiple historic sites.
- June 28, 2022, to approve a line item transfer of \$335,400 from the grants line item to the capital assets line item to perform work in accordance with the Secretary of the Interior's standards and guidelines for archeology and historic preservation of state historic sites using federal historic preservation funds.

#### **Department of Commerce**

- March 30, 2022, to increase federal funds spending authority by \$1.2 million for grants from the Corporation for National and Community Service for AmeriCorps projects, including education, economic opportunity, disaster services, environmental stewardship, health, and veteran and military family projects.
- March 30, 2022, to transfer \$220,000 of federal funds from the grants line item to the operating expenses line item for commission investment funds, which is a portion of the funding provided by the Corporation for National and Community Service for the AmeriCorps program.
- September 28, 2022, to increase federal funds spending authority by \$1.55 million in the operating expenses line item for marketing costs encouraging outdoor enthusiasts and leisure travelers to explore North Dakota outdoor activities (\$1.3 million) and to develop a digital information system to be a one-stop online system for all North Dakota outdoor experiences (\$250,000).



- September 28, 2022, to increase federal funds spending authority by \$250,000--\$75,000 in the salaries and wages line item, \$132,000 in the operating expenses line item, and \$43,000 in the grants line item--to create an outdoor recreation and rural placemaking plan to attract businesses, promote economic activity, and retain and attract workers to North Dakota.
- September 28, 2022, to increase federal funds spending authority in the COVID-19 response line item by \$14,222,975 from funds transferred from the Department of Health and Human Services to develop state energy conservation policy and manage federal energy conservation program activities between public and private sectors.
- September 28, 2022, to increase federal funds spending authority by \$1,306,112 from funds transferred from the Department of Health and Human Services to support furnace repair and cooling contracts with community action partners and to expand cooling programs for qualifying citizens.

#### **Department of Water Resources**

- March 30, 2022, to increase 2 FTE positions and to transfer \$452,500 from the general water grants line item to the salaries and wages (\$392,500) and capital improvements (\$60,000) line items for positions to support and administer water resources and for a replacement rover for dam safety inspections.

#### **Insurance Commissioner**

- June 28, 2022, to increase other funds spending authority by \$250,000 from the insurance regulatory trust fund for expenses relating to legal action taken against a company in noncompliance with law.

#### **Industrial Commission**

- June 28, 2022, to add a new line item and increase federal funds spending authority by \$2.5 million for administrative costs, including salaries and wages and operating expenses, related to a federal grant to plug and reclaim abandoned oil wells and oil well sites.

#### **Department of Transportation**

- June 28, 2022, to increase special funds spending authority by \$7,173,530 from user revenues deposited in the state fleet fund for vehicle purchases in the capital assets line item.

#### **Veterans' Home**

- June 28, 2022, to increase federal funds spending authority by \$1,805,000 from the Federal Emergency Management Agency and United States Department of Health and Human Services for COVID-19 expenses.

#### **Secretary of State**

- June 28, 2022, to increase federal funds spending authority by \$1 million in the election reform line item from federal Help America Vote Act funds provided through the federal Consolidated Appropriations Act of 2022.

#### **Department of Public Instruction**

- September 28, 2022, to transfer \$500,000 of general fund spending authority from the integrated formula payments line item to the grants - program and passthrough line item to increase funding available for the leveraging the senior year program.

#### **Governor's Office**

- September 28, 2022, to approve the acceptance of \$65,000 of other funds from the Dakota Medical Foundation for expenses of the recovery reinvented program which would result in the Governor's office receiving more than \$150,000 from the Dakota Medical Foundation during the 2021-23 biennium. The request was due to the Governor's office continuing appropriation authority which requires Budget Section approval to accept other funds in excess of \$150,000 from a single source.

#### **Department of Agriculture**

- September 28, 2022, to increase federal funds spending authority by \$420,000 for a local food purchase assistance grant program to enhance food and agriculture supply chain resiliency in the state.

#### **State Library**

- September 28, 2022, to transfer \$138,000 of general fund spending authority from the salaries and wages line item to the operating expenses line item to be used to increase funding for online resources to meet maintenance of effort requirements for federal funding.

# EDUCATION FUNDING COMMITTEE

The Education Funding Committee was assigned the following responsibilities:

1. Section 14 of House Bill No. 1388 (2021) provided for a Legislative Management study of K-12 school funding, including transition minimum reduction impacts to reorganized and consolidated school districts. The study must include:
  - a. A review of school districts that have multiple buildings in the district and districts that have built a new building without using traditional bonding methods as a result of a multidistrict reorganization;
  - b. An analysis of high-cost students, including students who are high cost due to special education needs, medical reasons, agency placements, or any other reasons that increase the cost to educate the students beyond the state threshold;
  - c. An ongoing review of the impacts of school districts that are off of the funding formula as they transition onto the formula;
  - d. An analysis of human resource allocation and the duties and needs in elementary and secondary school buildings with a targeted focus on student academic health, behavioral health, and social and emotional health; and
  - e. A review of student performance data relevant to students participating in virtual learning.
2. House Concurrent Resolution No. 3035 (2021) directed the Legislative Management to consider studying statutes governing career and technical education (CTE), including statutes in North Dakota Century Code Chapter 15-20.1 providing for the powers and duties of the State Board of Career and Technical Education, reciprocity with other states, cooperation with federal agencies, funding, reimbursement to institutions, gifts, reporting requirements, grants for innovation, elementary school entrepreneurship programs, career development certifications, career advisers, accessibility, impacts on students, the impact of additional CTE center student transportation on student transportation costs, and programs of study.
3. The Legislative Management also assigned the committee the responsibility to receive the following reports from the Superintendent of Public Instruction regarding:
  - a. The financial condition of school districts (Section 15.1-02-09);
  - b. Annual school district employee compensation reports (Section 15.1-02-13); and
  - c. An aggregated report of school districts receiving funds from the federal Elementary and Secondary School Emergency Relief (ESSER) Fund (Section 24 of House Bill No. 1013 (2021)).

Committee members were Senators Donald Schaible (Chairman), JoNell A. Bakke, Jay R. Elkin, David S. Rust, and Michael A. Wobbema and Representatives Ron Guggisberg, Donald Longmuir, David Monson, Mark S. Owens, and Denton Zubke.

Senator Erin Oban served on the committee until her resignation from the Legislative Assembly in March 2022.

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

House Bill No. 1388 directed a study of K-12 school funding, including transition minimum reduction impacts to reorganized and consolidated school districts.

### Background

The committee received background information regarding applicable North Dakota constitutional directives, the history of education funding in the state, and litigation that led to the creation of the North Dakota Commission on Education Improvement.

### North Dakota Commission on Education Improvement

The North Dakota Commission on Education Improvement was created in 2006 by executive order of the Governor in response to litigation regarding education funding provided by the state. 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 CTE 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 to focus its attention on developing recommendations regarding educational adequacy.

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.

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. 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.

### **Property Tax Relief Legislation**

While educational equity and adequacy continued to be dominant legislative concerns, additional time and attention was 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**

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 would 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 would be provided through a combination of local tax sources, local revenue, and state integrated formula payments. The local funding requirement was 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 would be provided by the state through the integrated formula payment. In addition, school districts were 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 included:

- 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 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 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.

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.

In 2017, due to revenue shortfalls, there were no increases in the integrated formula payment and the Legislative Assembly approved House Bill No. 1324, which 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 2019, the Legislative Assembly approved Senate Bill No. 2265, which 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, effective July 1, 2020, implement weighting factors, increasing over 5 years, to provide on-time funding for fall enrollment, and effective July 1, 2021, implement adjustments for the spring average daily membership (ADM);
- 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 provided weighted student units over the baseline weighted student units must be 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 provided 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.

In 2021, the Legislative Assembly approved House Bill No. 1388 which included the ADM of students enrolled in virtual instruction for state school aid and amended the state school aid funding formula to:

- Phase in school size weighting factor increases over 7 years beginning with the 2021-22 school year and adjust the school size weighting factors for school districts that do not have a high school and for school districts that operate multiple buildings at least 19 miles apart;
- Increase the integrated formula payment rate by 1 percent each year of the biennium, to provide \$10,136 per weighted student unit in the 2021-22 school year and \$10,237 per weighted student unit in the 2022-23 school year; and
- Begin phasing out transition maximum adjustments to the state school aid formula over 5 years, beginning in the 2023-24 school year.

In 2021, the Legislative Assembly also approved the following bills impacting the state school aid calculation:

- House Bill No. 1028 allowed school districts to temporarily transfer excess ending general fund balance funds, accruing as a result of the COVID-19 pandemic, between the general fund and the building fund of the school district.
- House Bill No. 1246 phased out the deduction of tuition received through federal impact aid funds in the state school aid formula over 6 years beginning with the 2021-22 school year.
- House Bill No. 1436 removed the remedial requirement for students in kindergarten through grade 4 in mathematics and reading to attend summer school.
- Senate Bill No. 2165 suspended the ending fund balance limit through June 30, 2023, and adjusted the calculation of school district ending fund balances to exclude federal impact aid before deducting the excess balance from state aid formula payments.

### **Foundation Aid Stabilization Fund**

Before 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 provides the Director of the Budget may order an allotment to control the rate of expenditures of state agencies. 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 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 to the Department of Career and Technical Education for CTE grants to school districts and area centers.

In 2021, the Legislative Assembly provided \$2,216,925,000 for integrated formula payments, transportation aid, and special education grants for the 2021-23 biennium, of which \$433,020,000 is from the state tuition fund, \$143,454,500 is from the foundation aid stabilization fund, and \$1,640,450,500 is from the general fund. In addition, general fund appropriations to the Department of Career and Technical Education for CTE grants to school districts and area centers total \$26,837,780 for the 2021-23 biennium. Based on this level of funding from the general fund during the 2021-23 biennium, the required foundation aid stabilization fund reserve balance for the 2023-25 biennium is \$250,093,242, \$7,235,691 less than the reserve required for the 2021-23 biennium.

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

The committee reviewed the impact of select changes made to the state school aid formula and whether changes have resulted in more school districts moving onto the formula.

### **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 funded 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.

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 was 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 Legislative Assembly 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. In 2021, the Legislative Assembly approved the phase-in of school size weighting factor increases over 7 years beginning with the 2021-22 school year and adjusted the school size weighting factors for school districts that do not have a high school and for school districts that operate multiple buildings at least 19 miles apart.

The committee reviewed information regarding the impact of the phase-out of transition minimum adjustments and increases in school size weighting factors. Enrollment increases and the 1 percent increase in the per student payment rate in the first year of the 2021-23 biennium eliminated the transition minimum adjustment for some school districts and increased the number of school districts on the formula. The decrease in the transition minimum adjustment, 15 percent per year starting with the 2021-22 school year, reduced state school aid for 90 school districts by a total of \$6.55 million. The dollar amount of the transition minimum adjustment will decrease for school districts each year, however the number of schools not on formula will not decrease until all of the transitional funding is phased out over 7 years. Unless there is an increase in the per-student payment, which would lower the school's minimum adjustment, the \$6.55 million reduction should remain consistent each year until the transition minimum adjustment is phased out. During the 2021-22 school year, 90 school districts received transition minimum adjustments resulting in increased state school aid of approximately \$37.1 million.

The committee was informed school size weighting factors were increased to offset funding cuts related to the phase-out of the transition minimum adjustments. In addition to the increase in the weighting factors, elementary school enrollments were converted to apply the K-12 school size weighting factors to elementary districts. The change in school size weighting factors increased weighted student units in 78 school districts and reduced weighted student units in the two largest elementary school districts for a net increase of 323 weighted student units. Of the school districts impacted by the transition minimum phase-out, 57 school districts benefited from the increase in school size weighting factors and the school size weighting factor decreased for one elementary school district. There were 21 small school districts that benefited from the increase in school size weighting factors even though funding was not reduced for the transition minimum phase-out.

The committee was informed the reorganized school district weighting factor for districts that operate two plants at least 19 miles apart, available for only the 2022-23 school year, is anticipated to impact five school districts and increase state school aid by \$3.6 million. There are three reorganized school districts with K-12 facilities more than 19 miles apart

and two reorganized school districts with an elementary and secondary facility more than 19 miles apart. The reorganized districts generally are too large to benefit from the increased school size weighting factors. One reorganized school district used general fund bonds to build a facility and will see a significant reduction in funding as transition minimum payments are phased out.

### **Transition Maximum Adjustments**

Transition maximum adjustments apply to those districts that were funded below the per student payment rate in the 2012-13 base year when the formula was implemented. Before 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 adjustments by 5 percent each year of the 2019-21 biennium. In 2021, the Legislative Assembly did not increase transition maximum adjustments, but rather provided for the phase-out of transition maximum adjustments to the state school aid formula over 5 years, beginning in the 2023-24 school year.

The committee was informed during the 2021-22 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 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 transition maximum will be phased out for all school districts after the 2026-27 school year.

### **Impact of Changes to Other State School Aid Formula Provisions**

The committee was informed each biennium, beginning in the 2011-13 biennium, the Legislative Assembly provided rapid enrollment grants to assist school districts experiencing rapid enrollment growth. In 2019, the Legislative Assembly provided rapid enrollment grants in the 1<sup>st</sup> year of the 2019-21 biennium and implemented, effective July 1, 2020, weighting factors, increasing over 5 years, to provide on-time funding for fall enrollment. In addition, the Legislative Assembly, effective July 1, 2021, implemented adjustments for the difference between fall enrollment and spring ADM. The 2021-22 school year is the 1<sup>st</sup> year the formula includes an adjustment for spring ADM to correct the fall enrollment on-time funding factor of the prior school year. The adjustment ensures school districts are continuing to educate the additional students reported in the fall. The 2021-22 school year adjustment for the difference between fall enrollment and spring ADM resulted in a 90.48 reduction in weighted student units, and will result in a clawback of just under \$1 million from districts that received additional funding for increased fall enrollment during the 2020-21 school year.

The committee was informed the Legislative Assembly, in House Bill No. 1246 (2021), approved the phase-out of the deduction of tuition received through federal impact aid funds in the state school aid formula over 6 years beginning with the 2021-22 school year. The phase-out of the deduction of tuition received through federal impact aid funds, including Air Force base tuition, increased state school aid for two school districts by a total of \$900,000 for the 2021-22 school year.

The committee was informed the Legislative Assembly, in House Bill No. 1436 (2021), removed the remedial requirement for students in kindergarten through grade 4 in mathematics and reading to attend summer school. Removing the remedial requirement to attend summer school is anticipated to increase summer school attendance and cost. Increased summer school attendance, resulting from removing the remedial requirement and students attending to reverse learning loss, is anticipated to increase state school aid approximately \$3.68 million during the 2021-23 biennium.

### **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 were no increases in the integrated formula payment rates during the 2017-19 biennium. The integrated payment rate was increased by 2 percent each year of the 2019-21 biennium and by 1 percent each year of the 2021-23 biennium, to provide \$10,136 per weighted student unit in the 2021-22 school year and \$10,237 per weighted student unit in the 2022-23 school year.



The total formula amount, adjusted for school district minimum and maximum calculations, is reduced by the local contribution of 60 mills and local in lieu of revenue. 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 \$10,136 during the 2021-22 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 \$10,136 receive transition minimum funding. Districts with state and local funding per weighted student unit below \$10,136 are subject to the transition maximum calculation. The Department of Public Instruction reported, of the 170 school districts operating in the state during the 2021-22 school year, 69 school districts are on the formula and 101 school districts, or 59 percent, are not on the formula.

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

The committee was informed 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 2021, the Legislative Assembly approved House Bill No. 1028 to amend Section 57-15-17 to allow a school district that transferred funding from its general fund to its building fund between March 13, 2020, and July 1, 2020, for the purpose of avoiding an excess fund balance deduction to its state school aid, to return the funding to its general fund, if the transfer was done before June 30, 2021. In addition, the Legislative Assembly approved Senate Bill No. 2165 (2021) to amend Section 15.1-27-35.3 to suspend the ending fund balance limit through June 30, 2023, and adjust the calculation of school district ending fund balances to exclude federal impact aid before deducting the excess balance from state aid formula payments.

The committee was informed, for the 2021-22 school year, a total of 59 school districts took advantage of the suspension of the ending fund balance limit. Due to the suspension of the ending fund balance limit, the department is unable to determine the impact of the exclusion of federal impact aid from ending fund balance calculation.

### **High-Cost Students and the Fiscal Impact of Student Placement**

The committee was informed DPI reimburses school districts for high-cost students and a school district's maximum responsibility depends on the student's placement. When a student is placed in a residential setting by an agency or a parent, school districts are reimbursed for costs exceeding the state average cost of education per student; however, when a student is placed by the school district, state reimbursement is made for costs exceeding four times the state average cost of education per student or for costs exceeding 2 percent of the total school district budget. Payments are made by school districts to providers and to other school districts for students in foster care or for students living in residential facilities that do not have an education system, but rely on the local school district. In addition, school placed students can include high-cost students who remain in their school district and the school district is reimbursed for the excess cost. School districts receive the state school aid per student payment of approximately \$10,000 for students placed in residential facilities and are responsible for the state average cost per student of just over \$12,000 (approximately \$48,000 for students placed by the school district). There is no reimbursement for high-cost students with medical needs who are not on an individualized education program (IEP).

The committee reviewed a summary of special education contract reimbursements, by provider, made to school districts during the 2019-21 biennium and the 2021-23 biennium through May 2022, including total cost and amounts reimbursed. Reimbursement only covers the cost of education. Room and board is paid by insurance or the parent. During the 2019-21 biennium, the state reimbursed school districts \$19.9 million of the \$25 million cost of agency-placed students and \$6.7 million of the \$32.8 million cost of school-placed students. Of the \$25 million cost to school districts for agency-placed students during the 2019-21 biennium, \$10.3 million was paid to the Anne Carlsen Center, of which \$9.1 million was reimbursed by the state. For the 2021-23 biennium, through May 2022, the state has reimbursed school districts \$8.7 million of the \$11.1 million cost of agency-placed students and \$2.3 million of the \$12.8 million cost of school-placed students. Of the \$11.1 million cost to school districts for agency-placed students, \$4.4 million was paid to the Anne Carlsen Center, of which \$3.8 million was reimbursed by the state. The department does not have a system to audit the costs billed to school districts by residential facilities.

The committee received a report regarding services provided by the Anne Carlsen Center and reimbursements received from the Department of Human Services (DHS) and school districts. All students served at the center have been diagnosed with intellectual disabilities and nearly one-half of the center's licensed beds are occupied by students with complex medical needs. The center also serves students with autism requiring significant supports. The center partners with Jamestown Public Schools to provide education in the least restrictive environment and provides 175 days of instruction to 58 students, including day students, which represent approximately 18 percent of the student population. In addition to educators, the center employs support staff necessary to provide individualized special education for students with complex needs, including licensed clinical social workers, case management, board certified behavior analysts, registered behavior technicians, nurses, speech pathologists, and occupational and physical therapists. Tuition includes special education, behavioral support services, nursing, vocational and community training, adaptive physical

education, learning and media center assistive technology, transportation, adaptive technology, educational administration, and overhead (maintenance, building, and administration). Extracurricular activities, afterschool clubs, athletic activities, and spiritual care are not included in tuition. Speech, occupational, and physical therapy are provided as determined in the student's IEP, but are not included in tuition costs. Therapy units are itemized per student and billed separately. Boarding or residential costs are not billed to school districts.

The committee received a report regarding the types of developmental disabilities services that qualify for reimbursement under the Medicaid program. The Medicaid state plan provides for intermediate care facilities for individuals with intellectual disabilities, personal care services, and targeted case management with personal care services. Intermediate care facilities for individuals with intellectual disabilities is the highest level of service authorized. The all-inclusive rate paid to providers is based on the level of need and includes room and board, but does not include education services. The Medicaid home- and community-based services waiver program provides services that allow individuals with developmental or intellectual disabilities to live in their own home and receive services in the community. Waiver funding may not be used to pay for special education and related services that are included in a child's IEP. However, some services in the IEP may qualify as basic Medicaid benefits.

The committee was informed because most of the students at Anne Carlsen Center are Medicaid eligible, services indicated in their IEP for speech, occupational, and physical therapies are all Medicaid services that could be billed through education services, however the Anne Carlsen Center is not allowed to bill Medicaid for education-based services. Approximately 20 percent of the amount paid to the Anne Carlsen Center by two special education units is for services that could be billed through Medicaid, such as speech, occupational, and physical therapies. If these therapies could be billed to Medicaid, rather than to the local education agency and the state contract system, where it is reimbursed by DPI, there would be a savings to the state. To leverage the federal funds, the Legislative Assembly may wish to review the possibility of the Anne Carlsen Center directly billing Medicaid for certain services. Because therapists at the Anne Carlsen Center hold the appropriate licenses and IEPs document the need for services, the center should meet the requirements to bill for these services, directly. If there was medical need for the therapy and the cost was billed through DHS as a medical service, instead of as educational services through the school district, the federal match would be paid by DHS instead of the school district, reducing costs to school districts.

The committee was informed local education agencies are required to pay for services at facilities such as the Anne Carlsen Center throughout the school year. The upfront cost is significant and most of the cost is reimbursed through the special education contract system at the end of the school year. It may be more efficient to have DPI pay facilities directly, rather than reimburse local education agencies.

### **Elementary and Secondary School Emergency Relief Fund**

The committee received reports regarding the allocation of ESSER funds to school districts and uses of the funds. Ninety percent of ESSER funds were allocated to school districts based on the Title I funding formula, which includes free or reduced lunch eligibility. The remaining 10 percent is available to DPI for statewide efforts. All expenditures must relate to preventing, preparing for, or responding to COVID-19 and 20 percent of all funds allocated to school districts must be spent on services to accelerate student learning recovery. Funds are held by DPI until reimbursement is requested for eligible expenditures by the school district.

The committee was informed the state received ESSER I funds in April 2020 totaling \$33.30 million, including \$30.10 million allocated to school districts, which must be spent by September 30, 2022. Of the \$30.10 million allocated to school districts, \$28.33 million was expended through May 2022 and \$1.73 million remained to be spent. In December 2020, the state received ESSER II funds totaling \$135.90 million, including \$123.40 million allocated to school districts, which must be spent by September 30, 2023. Of the \$123.40 million allocated to school districts, \$39.53 million was expended through May 2022 and \$83.84 million remained to be spent. While funding from the ESSER II Fund has a learning loss requirement, there is no minimum that must be used for learning loss. In March 2021, the state received ESSER III funds totaling \$305.30 million, including \$275.90 million allocated to school districts, which must be spent by September 30, 2024. Of the \$275.90 million allocated to school districts, \$26.78 million was expended through May 2022 and \$249.15 million remained to be spent. The ESSER III Fund allocation requires 20 percent of funding allocated must be used for learning loss. Schools have been using the ESSER III Fund allocation first to meet the learning loss expenditure threshold requirement that is not included in the ESSER I Fund or ESSER II Fund allocations.

The committee was informed uses of ESSER funds by school districts include educational technology (20.23 percent), learning loss (18.86 percent), air quality (9.50 percent), school facility repairs and improvements (9.03 percent), transportation (6.24 percent), and cleaning supplies (5.69 percent). Other uses that totaled less than 5 percent each include additional pay, high-quality instructional materials and curricula, renovation projects, mental health supports, supplemental learning, preparedness and coordination, public health protocols, professional development, budgetary shortfalls, acquisition of real property or modular classrooms, added needs of at-risk population,

construction projects, other activities, emergency response, special education, CTE, Every Student Succeeds Act, and adult education and family literacy.

The committee was informed while school districts would like to use ESSER Fund allocations to hire more teachers to address learning loss, there is concern that when the funding is no longer available the school district may need to remove the teacher through the nonrenewal procedure. Legislation to allow a time-limited contract when the funding source is temporary would save the school district and the teacher from the nonrenewal procedure.

The committee reviewed a report regarding the uses of the 10 percent discretionary ESSER funds (\$47 million) appropriated to DPI, including allocations for various programs and partnerships. In addition to the cost of administering the grant funding, the department has allocated the state's discretionary funding to the following programs:

- DHS early learning partnerships (\$9 million).
- Comprehensive literacy site expansion grants (\$5 million).
- Science of reading teacher professional development (\$2 million).
- Afterschool and summer program expansion (\$2 million).
- Grow-your-own teacher shortage grants (\$1.84 million).
- Financial transparency website infrastructure (\$1.36 million).
- School food innovation grants (\$1.26 million).
- Partnership with regional education associations for priority standards workshops (\$1.14 million).
- Grants to school districts not eligible for ESSER funds through the federal formula (\$1.07 million).
- Exact Path single signon online learning for families (\$1.04 million).
- LINCspring online teaching professional development (\$1 million).
- Expand multitiered systems of support (\$800,000).
- Choice ready grants (\$800,000).
- Incentivize cost-sharing of district administration (\$750,000).
- Partnership with the Parks and Recreation Department for summer learning (\$600,000).
- Mathematics innovation zones (\$600,000).
- "Be Legendary" school board leadership institute (\$500,000).
- Personalized, competency-based learning scale work (\$500,000).
- Grants to special education units (\$452,947).
- High-impact tutoring (\$400,000).

### **Status of State School Aid - 2021-23 Biennium**

The committee received reports from DPI regarding student enrollment and the status of funding for state school aid for the 2021-23 biennium.

In 2021, DPI estimated integrated formula payments during the 2021-23 biennium based on 2021-22 school year ADM of 113,914 students and 2022-23 school year ADM of 116,898 students. The department estimated state school aid integrated formula payments will total \$2,815,768,609 during the 2021-23 biennium, of which \$610,698,957 was estimated to be provided through local property tax contributions, \$94,702,361 was estimated to be provided through local in lieu of taxes and revenue contributions, and \$2,110,367,291 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 2021-23 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 \$21,457,709, for a total of \$2,131,825,000 charged to the integrated payment line item for the 2021-23 biennium. Based on total integrated formula payments, the state's share of funding for the state school aid formula was expected to total approximately 75 percent during the 2021-23 biennium.

The committee was informed DPI estimates state school aid for the 2021-22 school year, based on 2021-22 school year ADM of 113,024 students, will total \$1.378 billion, of which \$296.9 million, or 21.5 percent, is provided by local property tax, \$52.1 million, or 3.8 percent, is provided by local in lieu of revenue, and \$1,029.3 million, or 74.7 percent, is provided by the state through integrated formula payments. State school aid for the 2022-23 school year, based on revised estimated 2022-23 school year ADM of 115,543 students is estimated to total \$1.416 billion; of which \$313 million, or 22.1 percent, is estimated to be provided by local property tax; \$58.2 million, or 4.1 percent, is estimated to be provided by local in lieu of revenue; and \$1,044.7 million, or 73.8 percent, is estimated to be provided by the state through integrated formula payments. The local property tax contribution to 2022-23 state school aid is known because it is based on 2021 property values; however, the contribution from in lieu of revenue will not be known until August or September 2022. Lower than anticipated enrollment, higher local in lieu of revenue than anticipated in the budget, and lower than anticipated impacts from on-time enrollment resulted in budget savings of \$21.6 million during the 2021-22 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 \$25.5 million less than budgeted. Based on current enrollment estimates and estimated local contributions to the state school aid formula, the department anticipates approximately \$47 million of state school aid will remain unspent at the end of the 2021-23 biennium.

### **Projected State School Aid - 2023-25 Biennium**

#### **Cost to Continue**

The committee reviewed a preliminary estimate of funding required to continue current state school aid integrated formula payments during the 2023-25 biennium. The report, prepared by DPI, was based on:

- ADM projected using a 4-year survival routine (3 changes), 2018-2019, 2019-2020, and 2021-2022 (2020-2021 was omitted due to the pandemic).
- Taxable valuation for calendar years 2022 and 2023 is calculated based on a 2-year average increase with a maximum of 5 percent and a minimum of 0 percent. A 1-year change was used for districts receiving a substantial land transfer, omitting the year the district received the large land transfer.
- Other changes include the following approved by the Legislative Assembly:
  - Updated on-time funding weighting factors.
  - A deduction for property taxes over the 12 percent limit for districts not deducting at 60 mills.
  - Phase-out of the transition minimum adjustments.
  - Phase-out of the transition maximum adjustments.
- Other statistical data and weighting factors based on data supporting the 2021-22 payment year.

The committee was informed enrollment is projected to be relatively stable during the 2023-25 biennium and the cost to continue state school aid is anticipated to be \$18.9 million less than the 2021-23 biennium appropriation. Additional cost related to increases in the school size weighting factor and the phase-out of the transition maximum adjustment are offset by savings related to the phase-out of the transition minimum adjustment and increases in property valuations, which increase the local contribution to state school aid. The department is projecting a significant decrease in kindergarten students in the 2023-25 biennium due to decreased births in 2018.

The committee was informed inflation has had a significant impact on school budgets in the current biennium and the impact is anticipated to continue in the 2023-25 biennium. The cost of salaries and benefits for teachers and instructional support is anticipated to be approximately 3.7 percent more than estimated for the 2021-23 biennium.

### **Committee Recommendation**

The committee makes no recommendation related to its study of the elementary and secondary education state school aid funding formula.

### **CAREER AND TECHNICAL EDUCATION STUDY**

House Concurrent Resolution No. 3035 directed a study of statutes governing CTE, including statutes in Chapter 15-20.1 providing for the powers and duties of the State Board of Career and Technical Education, reciprocity with other states, cooperation with federal agencies, funding, reimbursement to institutions, gifts, reporting requirements, grants for innovation, elementary school entrepreneurship programs, career development certifications, career advisers, accessibility, impacts on students, the impact of additional CTE center student transportation on student transportation costs, and programs of study.

## **Background**

The committee reviewed federal provisions related to vocational education, education reforms, and federal programs designed to improve the skills of the labor force and provide job opportunities for adults. The committee also reviewed information regarding how the Department of Career and Technical Education is addressing the nation's shortage of skilled workers by utilizing partnerships between educators and employers, increasing focus on the academic achievement of CTE students, strengthening the connections between secondary and postsecondary education, and improving state and local accountability.

### **State Board for Career and Technical Education**

The State Board for Career and Technical Education consists of the members of the State Board of Public School Education, the Executive Director of Job Service North Dakota, and the Commissioner of Higher Education or the commissioner's designee. The board oversees the Department of Career and Technical Education and appoints a Director and Executive Officer of the department who is charged with the administration of the provisions of Chapter 15-20.1 relating to CTE, under the direction and supervision of the board.

The State Board for Career and Technical Education, pursuant to Chapter 15-20.1, may cooperate with the United States Department of Education and other federal agencies in the administration of Acts of Congress relating to CTE and has the following powers and duties:

1. To administer any legislation enacted by the Legislative Assembly pursuant to or in conformity with Acts of Congress relating to CTE.
2. To administer federal and state funds for the promotion of CTE and to contract with:
  - a. Any public or private institution or agency, board of trustees of any agricultural and training school, or school district of this state; or
  - b. Any public or private institution or agency, or political subdivision, of another state.
3. To formulate plans for the promotion of CTE in such subjects as are an essential and integral part of the public school system of education.
4. To provide for the preparation of teachers.
5. To fix the compensation of such officers and assistants as may be necessary to administer the federal acts and the provisions of Chapter 15-20.1 relating to CTE and to pay the same and other necessary expenses of administration from any funds appropriated for such purpose.
6. To make studies and investigations relating to CTE.
7. To promote and aid in the establishment of schools, departments, or classes, and to cooperate with local communities in the maintenance of CTE schools, departments, or classes.
8. To prescribe the qualifications and provide for the certification of teachers, directors, and supervisors.
9. To cooperate with governing bodies of school districts and with organizations and communities in the maintenance of classes for the preparation of teachers, directors, and supervisors of CTE, to maintain classes for such purposes under its own direction and control, and to establish and control, by general regulations, the qualifications to be possessed by persons engaged in the training of CTE teachers.
10. To coordinate new and existing farm management programs offered by any state agency or entity.
11. To create and expand marketing clubs as adjuncts to new and existing farm management programs.
12. To administer and supervise the program and all activities of the Center for Distance Education (CDE).

During the 2019-20 interim, the Department of Career and Technical Education reported there were 10 centers across the state, 5 facilities and 5 virtual centers. All centers provide some virtual learning experiences. In August 2020, CTE directors indicated most courses and instructors were at capacity. Career and technical education concerns included:

- Transportation for students traveling for coursework or hands-on labs;
- Maintaining hands-on coursework with distance or hybrid teaching;
- Additional sanitation costs;
- Social distancing during labs; and
- Providing quality work-based learning opportunities.

### **Delivery of Career and Technical Education**

The committee was informed in 2021, Senate Bill No. 2019 and House Bill No. 1015 provided a total of \$126,754,880, of which \$41,735,063 was from the general fund and \$85,019,817 was from other funds, to defray the expenses of the Department of Career and Technical Education for the 2021-23 biennium. Funding included in the appropriation for CTE for CDE includes 28.80 full-time equivalent positions and \$9,461,254, of which \$6,411,254 is from the general fund and \$3,050,000 from the independent study operating fund. The Legislative Assembly provided increases in funding from the general fund to CTE, including \$1,250,000 for the cost to continue CTE course cost reimbursement rates at schools (27 percent) and area career and technical centers (40 percent); and \$1,000,000 for new and expanding secondary programs. In Section 2 of Senate Bill No. 2019, the Legislative Assembly provided legislative intent that school districts:

- Use funds available from the ESSER Fund to effectively benefit students;
- Prepare to provide for any future operating and maintenance costs relating to new or expanded programs resulting from the expenditure of these federal funds because state funds will not be provided to replace these federal funds; and
- Prepare to provide increased local support for area career and technical centers since state secondary grant funding is limited and the share of state assistance for these programs may decrease if new or expanded programs are established.

The committee reviewed the department budget, course cost reimbursement at schools and area career and technical centers, new and expanding secondary programs, costs associated with students traveling for CTE coursework or hands-on labs, Emergency Commission and Budget Section requests to approve funding from ESSER funds through DPI, and federal funding received to provide tuition assistance for new farmers and ranchers to participate in the adult farm management program. Department of Career and Technical Education travel costs reimbursed by DPI during the 2020-21 school year totaled \$367,857.

The committee was informed the role of the career advisors program, which was established as a result of House Bill No. 1400 (2009), is to assist school counseling programs and help schools meet the 1 to 300 counselor-to-student ratio required by that legislation. A career advisor must work under the direction and supervision of a school counselor specifically in the career domain. Career advisors disseminate labor market information to students and provide career exploration experiences for students. The Department of Career and Technical Education began certifying career advisors in 2010.

### **Statewide Area Career Center Initiative Grant Program**

House Bill No. 1015 (2021) appropriated \$70 million of one-time funding anticipated to be received through the federal American Rescue Plan Act from the federal Coronavirus Capital Projects Fund to the Department of Career and Technical Education for a statewide area career center initiative grant program. The department was required to establish the application process and develop eligibility requirements for the grant program that must include:

- Funding may be used only for CTE projects involving construction, addition, maintenance, and equipment for new and existing area career centers;
- Grants awarded to each recipient must be at least \$500,000, but may not exceed \$10 million;
- Grants may be awarded only to the extent a school district has secured matching funds from nonstate sources on a dollar-for-dollar basis;
- An applicant must identify sufficient future nonstate sources of funding for ongoing operating and maintenance costs associated with a new or expanded area career center;
- The application period for the grant program begins with the effective date of House Bill No. 1015 and ends on June 30, 2022. Any funding not committed by December 31, 2022, may not be spent and must be canceled at the end of the 2021-23 biennium in accordance with Section 54-44.1-11;
- Preference must be given to school districts that collaborate with other school districts for a regional area career center facility or to school districts to create a new area career center or use an existing area career center to positively affect that region of the state; and
- Preference must be given to school districts that will promote postsecondary education and workforce training education in conjunction with secondary education.

The committee received periodic updates regarding funds awarded for the statewide area career center initiative grant program. The committee was informed:

- State guidance for the distribution of \$70 million appropriated to the Department of Career and Technical Education to expand access to career and technical centers and facilities was released in June 2021.

- Application round deadlines were set for October 1 and December 1 and a maximum of \$35 million was allocated in the first round.
- As of October 1, 2021, 10 applications were submitted totaling \$70.3 million; however, Coronavirus Capital Projects Fund guidance released in September 2021 included a requirement that projects are designed to include health monitoring. The new guidance required some applications to be amended.
- During the November 2021 special legislative session, funding for the statewide area career center initiative grant program was modified to provide \$88.3 million of one-time funding anticipated to be received through the federal American Rescue Plan Act of 2021 from the Coronavirus Capital Projects Fund (\$68.3 million) and from the federal State Fiscal Recovery Fund (\$20 million).
- State grant guidance was released in November 2021 with an application deadline of December 31, 2021. The goal to grant funds was March 31, 2022. All funds must be obligated by December 31, 2022, and must be spent by June 30, 2023.
- The Department of Career and Technical Education received 17 applications totaling approximately \$117 million.
- A nine-person grant review team was established to provide recommendations to the State Board for Career and Technical Education.
- The State Board for Career and Technical Education approved 3 of the more "shovel ready" project applications in January 2022, funded by \$20 million from the State Fiscal Recovery Fund, and 13 additional applications in March, funded by \$68.3 million from the Coronavirus Capital Projects Fund. Selection criteria included consideration of the facility and governance, including information regarding location and allocation of space and partner school districts; needs assessment and programming, including workforce needs and student interests and how proposed and expanding programs align with needs assessment results; post-secondary and workforce partners, including post-secondary and workforce offerings to be housed within the facility; and budget proposal, including a detailed budget and match commitments.
- The Office of Management and Budget submitted the application for funding from the Coronavirus Capital Projects Fund to the United States Department of the Treasury on December 27, 2021, and the grant agreement was executed. The grant plan, which will be used by the Department of the Treasury to assess the proposed use of funds, was submitted February 1, 2022. Federal guidance requires projects must directly enable work, education, and health monitoring; address a critical need that resulted from or was made apparent by the COVID-19 public health emergency; and address a critical need of the community.
- As of June 2022, the state's grant plan was still awaiting approval from the Department of Treasury.
- Grantees expressed concern the grant plan has not yet been approved by the Department of the Treasury. Inflation is causing increases in construction costs and grantees anticipate asking for additional funds to complete the projects as submitted.
- Delays in funding and supply chain issues may make the June 30, 2023, biennium end deadline difficult to meet and the Department of Career and Technical Education may request carryover authority to complete the projects.
- The timeline of the availability of the federal funding is unknown. Loan funds from the Bank of North Dakota could provide immediate cash; however, if the grant plan is not approved by the federal government, the projects would be in debt. While the grant plan meets the federal criteria, there is no guarantee it will be approved.
- CTE centers have indicated additional support for ongoing operations is vital. The Department of Career and Technical Education is reviewing program costs for the 2023-25 biennium budget and in addition to new programs coming online, the department must consider the increase in reimbursement rates for current programs that may move from a high school to a career center.
- Because inflation is a concern and most of the CTE teachers are coming from the workforce, salaries must be competitive.
- Career centers included in the grant program will benefit 99 partner school districts.

### **Committee Recommendation**

The committee makes no recommendation related to its study of CTE.

### **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 statewide and district information regarding fund balances, mill levy rates, taxable valuation, revenues,

expenditures, student enrollment, ADM, average cost per student, teachers, average salaries, state aid, transportation statistics, open enrollment, 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 *2020-21 Employee Compensation Report* includes data electronically submitted through the state automated reporting system (STARS) for school years ending in June of 2019, 2020, and 2021, and is available in an Excel format on the department's website. For comparison purposes, the report only includes full-time licensed school district employees who worked more than 144 days, down from 175 days in 2019 due to school districts transitioning from days to hours. The report does not include employees earning less than \$27,500, the minimum salary allowed for a teacher. Pursuant to Section 15.1-02-13, school districts are required to submit employee compensation information before September 11 of each year. Administrators include principals, superintendents, directors, assistant principals, assistant or deputy superintendents, and assistant directors. The average base salary for administrators increased from \$99,337 to \$103,439, or 4.13 percent, from 2019 to 2021. The average base salary for teachers increased 3.53 percent, from \$54,154 to \$56,063, over the same period. Teachers include coordinators, counselors, instructional programmers, library media specialists, special education consultants, pupil personnel, psychologists, speech and language pathologists, supervisors, teachers, and tutors in training. The number of administrators statewide increased from 643 in 2019 to 696 in 2021, while the number of teachers increased from 9,176 to 9,613 during the same period.

The committee received, pursuant to Section 24 of House Bill No. 1013 (2021), a report from the Superintendent of Public Instruction regarding an aggregated report of school districts receiving allocations from the ESSER Fund. Section 24 of House Bill No. 1013 required school districts to report information regarding learning loss, including subgroup gaps; school district plans to accelerate learning recovery for all students, including closing subgroup gaps; uses of ESSER funds, including the percentage of those funds expended by category; and the impact ESSER Fund expenditures had on accelerating learning recovery to the Superintendent by December 1, 2021. The Superintendent was required to present an aggregated report to the Legislative Management by June 1, 2022. School districts are required to submit a second report to the Superintendent by December 1, 2022, and the aggregated report must be presented by the Superintendent to the 68<sup>th</sup> Legislative Assembly.

The committee was informed school districts reported significant learning loss among students with disabilities and students with an IEP (48 percent of the school districts), low-income students (39 percent of the school districts), English language learners (17 percent of the school districts), and one or more racial or ethnic subgroups (30 percent of the school districts). The department used discretionary ESSER funds to partner with SAS Institute, Inc., to employ the education visualization and analytics solution (SAS EVAAS) tools, which leveraged existing assessment data to project what student assessment scores would have been without the pandemic disruption. Projected assessment scores were compared to students' actual performance on the 2021 state assessment. The analysis investigated learning decline across subjects and grades, schools and districts, and student groups. Findings included:

- English language arts test scores for students in grades 5 through 8 and 10 were close to prepandemic expectations. The impact in this subject area was less in North Dakota than was noted in similar analyses in North Carolina, Ohio, and nationally.
- Mathematics test scores for students in grades 5 through 8 and 10 suffered observable learning decline.
- About 40 percent of schools met or exceeded prepandemic expectations in English language arts and about 30 percent of schools met or exceeded prepandemic expectations in mathematics.
- Overall, students at all levels of achievement experienced similar levels of learning decline. Some student groups saw differences in learning decline compared to their peers, but most mirrored prepandemic differences. However, the gap widened for English language learners, students with disabilities, low-income students, homeless students, Native American students, and male students.

The committee was informed districts plan a variety of strategies to address learning loss, most common are new or additional technology (80 percent of school districts), hiring additional personnel (78 percent of school districts), health-related supports (71 percent of school districts), and new curricula (70 percent of school districts). Districts' plans to close subgroup gaps varied widely including reviewing IEPs, increasing minutes of service for students showing significant loss, and incentivizing teachers to earn credentials or endorsements to serve students with disabilities or English language learners. Districts reported a range of positive outcomes resulting from accelerating learning recovery funding, including increased learning in mathematics and English language arts (43 percent of school districts) and increased learning in other subjects (14 percent of school districts). North Dakota state assessment data from spring 2021 indicated a reduction in the percentage of proficient and advanced students, when compared to assessment data from spring 2019, in all grades tested for English and mathematics. There was no assessment in 2020. Preliminary state assessment data from spring 2022 indicates an increase in proficient and advanced students in some grades; however,



the percentage of proficient or advanced students continued to decrease in grade 8 English and grades 7, 8, and 10 mathematics.

The committee was informed students in a virtual learning environment will have their data separately identified in future assessments. In 2022, data will be available to compare virtual and in-person learning.

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

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

- CDE regarding a self-sustaining fee structure, anticipated enrollment growth for the remainder of the 2021-23 biennium, and the center's plan to manage the growth to ensure capacity is available for resident students.
- DPI regarding the role of school counselors, including required counselors and credentialing.
- The Department of Career and Technical Education regarding career counselors, including training and reimbursements.
- Various stakeholders and providers regarding school districts' behavioral health challenges and services.
- The Information Technology Department regarding the status of Project Lighthouse, the information technology project sponsored by DPI, the State Department of Health, and DHS, to upgrade STARS and the statewide longitudinal data system.
- The Tax Department regarding school district budget timelines, budget deadlines, and the availability of budget information.

# EDUCATION POLICY COMMITTEE

The Education Policy Committee was assigned three studies for the 2021-22 interim:

- Section 1 of House Bill No. 1111 (2021) directed a study of competency-based learning and schools participating in innovative education programs.
- Section 2 of Senate Bill No. 2332 (2021) directed a study of the criteria for alternative teacher licensure.
- House Concurrent Resolution No. 3009 (2021) directed a study of North Dakota Century Code provisions relating to compulsory school attendance, including a comparison of other states' compulsory school attendance laws.

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

- A report regarding the study of interim education assessment systems, pursuant to Section 10 of Senate Bill No. 2141 (2021).
- A report on the outcome of the collaboration with workforce development stakeholders and the Kindergarten Through Grade Twelve Education Coordination Council on how to best integrate computer science and cybersecurity into curriculum, pursuant to Section 15.1-02-04(12).
- A report regarding updates and the collaborative report on the statewide prekindergarten through grade twelve education strategic vision, pursuant to Section 15.1-02-04(9).
- A report regarding proposed changes to the state accountability plan, pursuant to Section 15.1-02-17.
- A report regarding requests from a school or school district for a waiver of a school accreditation rule, pursuant to Section 15.1-06-08.
- A report regarding waiver applications, pursuant to Section 15.1-06-08.1.
- A report regarding the innovative education program, pursuant to Section 15.1-06-08.2.
- A report regarding the academic performance metrics of students participating in virtual instruction, pursuant to Section 15.1-07-25.4.
- A report on the learn everywhere program, pursuant to Section 15.1-07-35.
- A report regarding the compilation of test scores in reading and mathematics given annually to students statewide, pursuant to Section 15.1-21-10.
- A report regarding the implementation and effectiveness of the science of reading curriculum, pursuant to Section 15.1-21-12.1.
- A report with a recommendation on whether to continue the dyslexia screening pilot program beyond the 2022-23 school year, pursuant to Section 15.1-32-26.

The committee was assigned the responsibility 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, pursuant to Section 15.1-13-36.
- A report regarding the number of teacher licenses issued under the alternative teacher certification program, the program's effectiveness, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives, pursuant to Section 25 of Senate Bill No. 2265 (2019).

The committee was assigned the responsibility to receive the following reports from the Kindergarten Through Grade Twelve Education Coordination Council:

- A report regarding the council's activities, pursuant to Section 15.1-01-04(9).
- A report regarding the study of the council's membership, duties, and term limits, pursuant to Section 15 of House Bill No. 1388 (2021).

Committee members were Representatives Cynthia Schreiber-Beck (Chairman), LaurieBeth Hager, Patrick Hatlestad, Pat D. Heinert, Jeff A. Hoverson, Donald Longmuir, Andrew Marschall, David Monson, and David Richter and Senators David A. Clemens, Cole Conley, Jay R. Elkin, Doug Larsen, Diane Larson, Richard Marcellais, Jonathan L. Sickler, and Michael A. Wobbema.

Senator Erin Oban served as Chairman of the committee until her resignation from the Legislative Assembly in March 2022.

## **COMPETENCY-BASED LEARNING AND INNOVATIVE EDUCATION PROGRAM STUDY**

Section 1 of House Bill No. 1111 directed the Legislative Management to study competency-based learning and schools participating in innovative education programs. The study included a review of the schools and districts participating in innovative education programs; the progress of schools and districts that received waivers to participate in innovative education programs and incorporate competency-based learning initiatives; and the contents of the innovative education programs, best practices, and whether competency-based learning initiatives under the innovative education programs can be duplicated and expanded for statewide implementation.

### **Background**

There is a nationwide trend to transition away from "seat time" education toward competency-based learning in which students advance by demonstrating mastery of academic content. Competency-based learning provides schools the flexibility to award credit and provides students with personalized learning opportunities and allows students to work at their appropriate level regardless of age or grade level.

### **North Dakota Statutory Provisions**

Section 15.1-06-08 permits a school or school district to apply to the Superintendent of Public Instruction for a waiver of a school accreditation rule if the waiver encourages innovation and has the potential of improving educational opportunities or enhancing students' academic opportunities. A waiver may be valid for up to 1 year, and a one-time extension of an additional year may be requested. The Superintendent must file a report with the Legislative Management regarding approved and denied waiver requests, including the rule waived, the reason the waiver was granted, and the time period for the waiver.

Section 15.1-06-08.1 prohibits the Superintendent of Public Instruction from waiving a statute unless expressly authorized by the section. A school or school district may apply for a waiver of certain school-related chapters, including chapters addressing calendar length and instructional time, teacher qualifications, school attendance, and curriculum, if the waiver improves the delivery or administration of education, provides increased educational opportunities for students, or improves students' academic success. An initial waiver may be valid for up to 1 year, and extensions may be requested. The Superintendent must file a report with the Legislative Management regarding approved and denied waiver requests, including the reason the waiver was granted and the time period for the waiver. The Superintendent also must adopt rules governing the submission and evaluation of waiver applications and waiver monitoring.

Section 15.1-06-08.2 requires the Superintendent of Public Instruction to adopt rules and develop criteria for the submission, approval, and evaluation of proposals for participation in an innovative education program. Schools must receive approval from the school board or governing board before submitting a proposal to the Superintendent to participate in an innovative education program. A proposal must include evaluation criteria and specify the innovations to be pursued and the manner in which the proposal will improve the delivery or administration of education, provide increased educational opportunities for students, or improve students' academic success. If approved, the school must develop a comprehensive implementation plan and work with the Superintendent to ensure the proposal's long-term viability during the 1<sup>st</sup> year in the program. The Superintendent may approve a comprehensive implementation plan for up to 5 years and must report annually to the Legislative Management regarding innovative education programs, including the status of implementation, a summary of waived statutes or rules, and a review of evaluation data results. The legislative history indicates the intent was to give schools more flexibility to identify student needs and implement programs to meet those needs. The legislative history also indicates the intent was not to provide waivers of educational standards, but to allow waivers and innovative education programs that provide flexibility in how the standards are met.

### **Other States' Innovative Education Programs**

Other states permit competency-based learning or innovative education programs as an alternative to traditional seat time education, but requirements and criteria for the respective programs vary. For example, in Colorado, schools may submit innovation plans in areas, including school staffing, curriculum, assessments, class scheduling, and the use of financial resources, and the state board may waive related statutes or rules. In Michigan, school districts can apply for waivers from the minimum number of hours and days required for student instruction for a department-approved alternative education program or innovative program. Utah has implemented a competency-based learning grant program in which local education agencies apply for a grant and submit an application outlining the planned program

and providing evidence of the intent for schoolwide implementation. The local education agencies also may apply for a waiver of rules that hinder the agency from accomplishing the goals described in the grant application.

## **Testimony and Committee Considerations**

### **Department of Public Instruction**

The committee received testimony from representatives of the Department of Public Instruction (DPI) regarding the innovative education program. According to the testimony, schools may apply for waivers from certain statutory requirements and receive flexibility in how the districts provide education if the waivers will improve the delivery or administration of education, provide increased educational opportunities for students, or improve students' academic success. The testimony indicated the program's flexibility allows schools to design alternate strategies to best meet students' needs. According to the testimony, seven school districts participate in the program, and four of those districts participate through a cohort that collaborates with the department and receives ongoing support for the programs. The testimony noted the department offers support and assistance to participating districts even if a district is not a part of the cohort.

### **North Dakota Council of Educational Leaders**

The committee received testimony from a representative of the North Dakota Council of Educational Leaders. According to the testimony, the council hosts the Innovation Academy to provide training in proficiency-based learning, innovative education, and ways to overcome obstacles to implementing innovative practices. The cost for attending is \$100 per person per day, and participating districts usually send five people to the 5-day academy. Almost 300 personnel from 42 school districts have attended the training.

### **Central Regional Education Association**

The committee received testimony from a representative of the Central Regional Education Association regarding North Dakota full-service community schools, and the benefits and challenges of the full-service community school model. According to the testimony, a full-service community school is a school that collaborates with community partners to remove barriers to learning, provide equity to all students, and meet students' educational and noneducational needs by providing programs and services to schools and families, including health care and dental services. The federal Department of Education awarded a 5-year grant to Nexus-PATH Family Healing, a nonprofit organization providing community-based services for youth and families, to build, sustain, and expand a consortium for full-service community schools. Approximately 20 community partners work to provide eight types of services in schools through the project.

### **Other Stakeholder Testimony**

The committee received testimony from a representative of Northern Cass School District regarding the district's innovative education program. According to the testimony, the district no longer uses letter grades or percentages to evaluate learners and instead uses a four-point evaluation scale in which a score of three means a student is proficient. The program focuses on pillars of personalized learning, and the district has implemented flexible curriculum with unique pacing for each student based on what is best for each student.

The committee received testimony from representatives of Bismarck Public Schools' Career Academy regarding the Career Academy's innovative education program called Empower[Ed]. According to the testimony, 38 students from area high schools are enrolled in the program. The program is a competency-based program that measures whether a student is engaged and proficient in a required content standard, but does not measure how much time a student spends in the classroom. The program allows students to earn core subject credits toward graduation through career and technical education courses at the Career Academy. The standards and levels of proficiency within the program are the same as in a traditional setting, but the methods of achieving the standards are different.

The committee received testimony from a representative of Garrison Public Schools regarding the district's innovative education program. According to the testimony, the district implemented a flexible, modular schedule in which classes have varying lengths and seat-time requirements. Students spend different amounts of time on curriculum each day depending on their individual progression toward proficiency of the relevant standard. The district provides Chromebooks to all students and offers paid internships for students with area businesses so students receive real-world experience to further develop necessary skills.

The committee received testimony from a representative of Wilton Public Schools regarding the district's innovative education program. The testimony indicated the district offers multitiered systems to provide academic and behavioral support and participates in the full-service community schools program.

The committee received testimony from a representative of Nexus-PATH Family Healing regarding its partnership with full-service community schools. The testimony indicated Nexus provides a variety of services to schools through the project, including placing social workers in schools, and its services are funded primarily through Medicaid, donations,

and grants. The average annual cost of placing a full-time licensed social worker in a school ranges from \$100,000 to \$120,000, and the school district is responsible only for 25 percent of the cost.

The committee received testimony from representatives of the Central Regional Education Association and Avel eCare regarding services provided by Avel eCare to full-service community schools. According to the testimony, the eCare School Health Program provides schools with all-day access to nurses through live audio and video connections.

The committee received testimony from a representative of the South East Education Cooperative regarding services provided by North Dakota Reading and Math Corps to full-service community schools. According to the testimony, tutors work in schools to ensure students are proficient readers by the third grade.

### **Conclusion**

The committee makes no recommendation regarding its competency-based learning and innovative education program study.

## **ALTERNATIVE TEACHER LICENSING STUDY**

Section 2 of Senate Bill No. 2332 directed the Legislative Management to study the criteria for alternative teacher licensure.

### **Background**

There are several ways to become licensed to teach in North Dakota. The traditional method consists of receiving a bachelor's degree in education from an accredited institution; completing required teaching experience, including student teaching; obtaining a credential verifying qualifications; completing relevant examinations; applying for a license and paying relevant fees; and completing any additional required certifications or endorsements.

Alternative certification programs allow individuals to obtain a license outside the traditional pathway. Individuals only may be certified through Certification Central, the approved in-state alternative certification program for special education teachers, or through the American Board for Certification of Teacher Excellence, the only out-of-state alternative certification program currently satisfying statutory requirements. However, a teacher also may choose to enroll in an alternative certification program and obtain a teaching license in another state, depending on the specific state's rules, and then apply for an out-of-state license through the ESPB without going through the traditional licensing method or meeting state standards.

### **North Dakota Statutory Provisions**

Section 15.1-13-10 requires the ESPB to establish criteria for teacher licensure and the process for issuing licenses. The section places requirements on in-state and out-of-state alternative teacher certification programs and requires the ESPB to issue an initial teaching license to an individual who possesses a bachelor's degree from an accredited institution, passes a criminal history record check, and completes an alternative teacher certification program.

Section 15.1-13-10.1 prohibits the ESPB from requiring individuals licensed to teach in other states to complete student teaching to become licensed in North Dakota, but the section is inapplicable to individuals who completed an alternative education program. Section 15.1-13-14 requires the ESPB to conduct criminal history record checks on applicants. Section 15.1-13-17 requires individuals to obtain a teaching license from the ESPB or be approved by the ESPB to teach in the state. Section 15.1-13-20 requires the ESPB to issue a 2- or 5-year teaching license to an applicant licensed or certified in another state if the other state's licensure or certification is based on a minimum of a bachelor's degree with a major that meets the issuing state's requirements in early childhood education, elementary education, middle education, or a content area taught at a public high school; the licensure or certification is based on the completion of a professional education program from a state-approved teacher education program and includes supervised student teaching; and the applicant pays the required fee and passes a criminal history record check.

Chapter 15.1-18 outlines teacher qualifications. Section 15.1-18-10 allows individuals to teach in specialty areas at any grade level from kindergarten through grade 8 if the individual is licensed by the ESPB, is approved to teach in the content area, and meets requirements set by the Superintendent of Public Instruction. Section 15.1-18-10 also permits an individual to teach any subject except elementary education, special education, mathematics, science, language arts, and social studies if the individual has a high school diploma and a permit from the ESPB; has at least 4,000 hours of relevant work experience in the subject area to be taught over a 5-year period or possesses a certificate, permit, or degree in the subject area to be taught; and enrolls in the North Dakota Teacher Support System-approved mentor program.

Section 15.1-02-16 allows the Superintendent of Public Instruction to adopt rules governing the issuance of credentials to certain educators. Section 15.1-09-57 allows school districts and nonpublic schools to fill vacant positions with individuals not licensed in the course area if the individual is licensed or approved by the ESPB to teach other areas and the individual receives a temporary exception.

## **Other States' Licensing Requirements**

Other states' requirements for teacher licenses and alternative teacher licensing vary. A 2020 report from the National Council on Teacher Quality indicated 46 states and the District of Columbia allow alternative certification programs. Only Alaska, Oregon, Utah, and Wyoming do not permit some form of alternative teacher certification.

## **Testimony and Committee Considerations**

### **Education Standards and Practices Board**

The committee received testimony from a representative of the ESPB regarding alternative teacher certification programs. The testimony indicated the state is facing a teacher shortage, and alternative teacher licenses were developed in response to the national teacher shortage. According to the testimony, there are two state-approved alternative teacher certification programs. Section 15.1-13-10 allows an individual to obtain an initial teaching license if the individual has a bachelor's degree from an accredited institution and completes an alternative teacher certification program. The Education Standards and Practices Board has issued 21 licenses to individuals who completed an authorized out-of-state alternative teacher certification program. Section 15.1-18-10 also allows individuals who do not have a teaching license to teach noncore subjects if the individual obtains a permit from the ESPB and meets other criteria, including having at least 4,000 hours of relevant work experience in the subject area to be taught over the preceding 5 years. Testimony indicated the ESPB has issued 20 teaching permits under that framework, and the alternative licensing and permitting methods have helped mitigate the state's teacher shortage.

### **North Dakota United and DFM Research**

The committee received testimony from representatives of North Dakota United and DFM Research regarding teacher survey results from January 2022. According to the testimony, approximately 80 percent of North Dakota teachers are North Dakota United members, only 25 percent of survey respondents indicated they have not considered leaving the teaching profession, and only 41 percent indicated they intend on retiring from the teaching profession.

### **Tennessee Teacher Residency Program**

The committee received testimony from a representative of the Tennessee Department of Education regarding the Teacher Residency Program. According to the testimony, Tennessee's program was the first registered apprenticeship program for teaching approved by the United States Department of Labor. The program supports 650 future educators through federal and state funds, and the funds are used to pay for the college degree and credentialing of future teachers. According to the testimony, over 90 percent of the program's first cohort of teachers were retained.

### **Department of Public Instruction**

The committee received testimony from a representative of DPI noting the department worked with Minot State University to use special education funds to create scholarships for 70 special education paraprofessionals to continue their education and become fully-licensed teachers. According to the testimony, the department is considering expanding the program to individuals who want to become elementary education teachers and also is considering seeking approval from the United States Department of Labor for an apprentice program similar to Tennessee's program.

### **Other Stakeholder Testimony**

The committee received testimony from individuals who have completed alternative teacher licensing pathways. According to the testimony, one of the alternative teacher permit pathways allowed a participant to teach while being enrolled in school to receive a full teaching license. Testimony indicated the flexibility and self-paced nature of the Certification Central pathway allowed the participant to schedule coursework around other responsibilities and obligations. According to the testimony, without the availability of an alternative teacher certification program, one participant would have had to obtain additional coursework to become a licensed teacher, despite holding advanced degrees and having previous teaching experience at the college level in another state.

The committee noted the alternative teacher certification programs are not perfect, but the programs have helped address the teacher shortage, and program participants are making a positive impact. The committee also noted school districts may participate in the Career Builders program which provides matching funds to help businesses recruit and retain employees through scholarships or loan forgiveness.

## **Conclusion**

The committee makes no recommendation regarding its alternative teacher licensure study.

## **COMPULSORY SCHOOL ATTENDANCE STUDY**

House Concurrent Resolution No. 3009 directed the Legislative Management to study Century Code provisions relating to compulsory school attendance, including a comparison of other states' compulsory school attendance laws.

## **Background**

Compulsory school attendance generally refers to the minimum and maximum age required by each state at which a student must be enrolled in and attending public school or an equivalent education program defined by the law. A form of compulsory school attendance has been required in North Dakota since 1883.

Chapter 15.1-20 outlines the state's compulsory school attendance laws. Section 15.1-20-01 requires a person responsible for a child between the ages of 7 and 16 to ensure the child attends a public school for the duration of each school year.

Section 15.1-20-02 provides exceptions to the compulsory attendance requirements. The exception criteria are:

- The child is in attendance for the same length of time at an approved nonpublic school;
- The child has completed high school;
- The child is necessary to the support of the child's family;
- A multidisciplinary team has determined the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable; or
- The child is receiving home education.

Section 15.1-20-02.1 outlines the criteria for determining if a child is deemed to be in attendance at school. To be deemed in attendance, a student may not be absent from school without an excuse for more than:

- 3 consecutive school days during the 1<sup>st</sup> half or 2<sup>nd</sup> half of a school or school district's calendar;
- 6 half days during the 1<sup>st</sup> half or 2<sup>nd</sup> half of a school or school district's calendar; or
- 21 class periods.

School districts and nonpublic schools are required to adopt policies to define excused absences and may withhold credit, remove students from courses, and take other punitive measures against students who fail to arrive in a timely fashion or who exceed a specific number of absences.

Section 15.1-20-03 requires teachers and administrators to enforce compulsory attendance. Teachers must notify the school administrator if a student is not in compliance with the chapter and administrators must initiate investigations of reported absences and report to local law enforcement if the person responsible for the student has failed to ensure the student is in attendance. A person who fails to ensure a student is in attendance is guilty of an infraction for a first offense and a Class B misdemeanor for subsequent offenses.

### **Other States' Attendance Laws**

All 50 states have enacted compulsory attendance laws, but the age ranges of compulsory attendance and the exceptions vary. According to a state comparison published by the Education Commission of the States in August 2020, the ages for compulsory attendance under state laws range from age 5 to 19.

### **North Dakota Recent School Attendance Data**

During the 2019-20 school year, 115,986 students were enrolled in prekindergarten through grade 12 in public schools in the state, the average daily student attendance was 96 percent, and the chronic absenteeism rate was 11 percent. Chronically absent students were defined as students who attended school for at least 10 days but missed 10 percent or more of their enrolled days during the school year.

### **Testimony and Committee Considerations**

The committee received testimony from a representative of DPI and a member representing advisory cabinet stakeholder groups regarding compulsory school attendance laws. According to the testimony, the Superintendent of Public Instruction meets with advisory cabinet stakeholder groups every other month, and student attendance is discussed frequently. The testimony noted some 5- and 6-year-old students have sporadic school attendance, and 17- and 18-year-old students can drop out.

According to the testimony, the advisory cabinet stakeholder group reviewed the state's attendance rates, and chronically absent students, or students who are absent for more than 10 percent of the school year, represented 15 percent of students during the 2020-21 school year and accounted for nearly one-half of all absences. Testimony indicated students chronically absent for 1 year are at a higher risk of dropping out, and students who are chronically absent for at least 3 years have a graduation expectancy of less than 20 percent. The group compared North Dakota's compulsory attendance requirements to other states. According to the testimony, 38 states have a minimum compulsory attendance age of 5 or 6, and 12 states, including North Dakota, have a minimum compulsory attendance age of 7. Over

40 states require 10 or more years of compulsory school attendance, while North Dakota is one of six states requiring the fewest years of compulsory school attendance.

The advisory cabinet stakeholder group recommended lowering the minimum compulsory attendance age from age 7 to 6, adopting a uniform definition of chronic absenteeism, and funding a full-time equivalent position in DPI to monitor and reduce statewide chronic absenteeism.

### **Conclusion**

The committee makes no recommendation regarding its compulsory school attendance study.

### **REPORT ON INTERIM EDUCATION ASSESSMENT SYSTEMS STUDY**

The committee received a report from DPI regarding the interim education assessment systems study. Senate Bill No. 2141 (2021) required the Superintendent of Public Instruction to consult with education stakeholders and the Kindergarten Through Grade Twelve Education Coordination Council to study interim education assessment systems. The study required an evaluation and review of existing vendors, data standardization, statewide longitudinal data system compatibility, the costs associated with interim assessment systems, and the benefits of local and statewide interim assessment systems.

The committee was informed education stakeholders from across the state met to address the study objectives. According to the report, data collection of interim assessments administered across the state is difficult due to the large number of vendors being used and only a few vendors will share assessment data with the statewide longitudinal data system. The report indicated at least 15 vendors are used by school districts across the state. The report recommended school districts be required to administer interim assessments to students and a state-provided interim assessment be offered to public school districts. The report recommended school districts not be required to use the state-provided assessment tool, and if a district chose not to use the state-provided assessment, the district could select an interim assessment vendor from a state-approved list. The report indicated stakeholders involved in the study wanted school districts to maintain the ability to choose an interim assessment vendor and hoped the cost savings of using the state-provided interim assessment would incentivize districts to choose that option. According to the report, DPI could analyze the data provided by state-approved vendors, and DPI's data analysis could benefit smaller schools that may not have sufficient personnel or resources to analyze the data internally.

The committee reviewed a bill draft that would have required public school districts to annually administer two interim assessments in mathematics and reading to students in kindergarten through grade 10. The bill draft would have allowed school districts to use a state-provided interim assessment at no cost to the district, or select an interim assessment from a state-approved list. The bill draft would have required a vendor to share assessment data with the statewide longitudinal data system to qualify as a state-approved interim assessment vendor. The bill draft also would have provided that if a school district chose to use an interim assessment from the state-approved list, the district would be responsible for the cost of administering the assessment. A second bill draft was revised to clarify that if a district selected an interim assessment from a state-approved list, the district would be responsible for any assessment-related costs.

The committee expressed mixed opinions on the revised bill draft based on feedback received from some school administrators with concerns that school districts would not be allowed to use an interim assessment vendor of the district's choice. The committee was informed DPI only has received positive feedback because the revised bill draft allows school districts to maintain the ability to select an interim assessment vendor of the district's choice, and the revised bill draft would increase the availability of statewide data.

### **Recommendation**

The committee recommends a bill draft [\[23.0146.02000\]](#) to require public school districts to administer interim assessments in mathematics and reading to students in kindergarten through grade 10 and use a state-provided interim assessment or an interim assessment from a state-approved list.

### **REPORT ON COMPUTER SCIENCE AND CYBERSECURITY CURRICULUM INTEGRATION**

The committee received a report from DPI regarding the outcome of the collaboration with workforce development stakeholders and the Kindergarten Through Grade Twelve Education Coordination Council on how to best integrate computer science and cybersecurity into elementary, middle, and high school curriculum, pursuant to Section 15.1-02-04(12). According to the report, a task force of numerous stakeholders, including legislators and educators, was formed to address the integration of computer science and cybersecurity into curriculum. The task force recommended amending statutory provisions to include computer science and cybersecurity into curriculum for the elementary, middle, and high school levels, requiring each school district to adopt a computer science and cybersecurity integration plan,



requiring students graduate with knowledge and skills in computer science and cybersecurity, and making support and training available for professional development.

The committee reviewed a bill draft that would have required elementary, middle, and high schools to provide computer science and cybersecurity instruction and to develop integration plans that would need to be approved by the Superintendent of Public Instruction. The bill draft also would have added a unit of computer science or cybersecurity as an additional requirement for obtaining a high school diploma. A second bill draft was revised to clarify the additional computer science or cybersecurity requirement for obtaining a high school diploma.

Committee members expressed concern the proposed timeline for adding an additional computer science and cybersecurity requirement for high school graduation was too tight for schools to implement, and smaller schools may have difficulty finding staff willing to complete additional training or teach additional courses. Committee members noted school administrators had contacted members with similar concerns. Committee members acknowledged computer science and cybersecurity instruction for students is relevant and important, but noted concerns that adding more requirements on schools and educators would be viewed as another statewide mandate on an already overburdened education system. Committee members indicated a desire to have the revised bill draft scaled back to make it more palatable to school districts and educators and to have DPI introduce a revised version during the upcoming legislative session.

### **Conclusion**

The committee makes no recommendation regarding the report on computer science and cybersecurity curriculum integration.

### **ADDITIONAL REPORTS**

The committee received a report from DPI regarding updates and the collaborative report on the statewide prekindergarten through grade twelve education strategic vision, pursuant to Section 15.1-02-04(9). The strategic vision was developed through input provided by a steering committee of legislators and representatives of state-level education entities and stakeholders. The report included updates on the strategic themes including quality early childhood experiences, education personnel, and student-centered instruction; support for safe and healthy behaviors; and career awareness, exploration, and development.

The committee received reports from DPI regarding requests from schools or school districts for waivers of school accreditation rules, pursuant to Section 15.1-06-08, and waiver applications, pursuant to Section 15.1-06-08.1. The report indicated 15 schools or school districts are operating on a waiver.

The committee received a report from DPI 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 data results, pursuant to Section 15.1-06-08.2. The report indicated seven school districts participate in the innovative education program.

The committee received a report from DPI regarding the academic performance metrics of students participating in virtual instruction, pursuant to Section 15.1-07-25.4. According to the report, during the COVID-19 pandemic, instructional approaches varied and, overall, students who participated in distance learning experienced more learning decline than those who participated in hybrid learning, and students participating in neither performed closer to prepandemic expectations.

The committee received a report from DPI regarding the learn everywhere program, pursuant to Section 15.1-07-35. The report indicated the program allows schools to offer course credit for educational opportunities that occur outside the classroom with a sponsoring entity. According to the report, one proposal was received and approved for the 2022-23 school year from the Northern Cass School District to partner with Comligo USA, an online platform specializing in live Spanish classes for students.

The committee received a report from DPI regarding the compilation of test scores of a test aligned to the state content standards in reading and mathematics given to students statewide, pursuant to Section 15.1-21-10. According to the report, the 2020-21 assessment reflected an overall student proficiency of 42 percent in English language arts and 38 percent in mathematics across all grade levels.

The committee received a report from DPI regarding the implementation and effectiveness of the science of reading curriculum in improving students' educational outcomes and reading competency, pursuant to Section 15.1-21-12.1. The report indicated the law requires professional development training for kindergarten through third grade principals and teachers. According to the report, DPI provided an in-person training conference in July 2022, over 300 professionals attended, and 155 of the attendees earned professional development credit. Each elementary school must report to DPI before October 1, 2022, if a teacher is trained, untrained, or if the teacher's training is ongoing.

The committee received a report from DPI regarding whether to continue the dyslexia screening pilot program beyond the 2022-23 school year, pursuant to Section 15.1-32-26. According to the report, several pilot program districts use multi-tiered support systems to implement plans to incorporate dyslexia screening into their existing educational system and to ensure students identified as at-risk do not fall behind academically. The report included a recommendation to continue the pilot program and expand it statewide if the necessary legislation and funding is approved.

The committee received a report from the ESPB regarding electronic satisfaction survey results of all interactions with individuals seeking information or services from the board, pursuant to Section 15.1-13-36. The report indicated each applicant interaction with the ESPB provides an opportunity to respond to the survey, and the survey response areas include questions regarding timeliness, availability, courtesy, knowledge, staff responsiveness, and the ease of obtaining information and services. According to the report, 135 applicants responded to the survey and over 82 percent of respondents rated their interactions as "excellent."

The committee received a report from the ESPB regarding the number of teacher licenses issued under the alternative teacher certification program, the program's effectiveness, the quality of instruction provided under the program, and whether the program is accomplishing desired objectives. According to the report, the ESPB has issued 21 licenses under the program, and it was recommended that the program continue.

The committee received reports from the Kindergarten Through Grade Twelve Education Coordination Council regarding the council's activities, pursuant to Section 15.1-01-04(9), and the study of the council's membership, duties, and term limits. The report included recommendations to change the makeup of the council, increase the number of required meetings, and clarify the council's role.

# 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, pursuant to North Dakota Century Code Section 15-39.1-10.11.
- Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans, pursuant to 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, pursuant to Section 54-06-31.
- Receive a biennial report from OMB summarizing reports of state agencies providing service awards to employees in the classified service, pursuant to 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, pursuant to 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, pursuant to Section 54-06-34.
- Adopt a procedure for identifying measures and proposed measures mandating health insurance coverage of services or payments for specified providers of services, pursuant to Section 54-03-28(4).
- Approve terminology adopted by the Board of Trustees of TFFR to comply with applicable federal statutes or rules, pursuant to Section 15-39.1-35.
- Approve terminology adopted by the Public Employees Retirement System (PERS) Board to comply with federal requirements, pursuant to Sections 39-03.1-29, 54-52-23, and 54-52.1-08.2.
- Receive notice from the Board of Trustees of TFFR of any necessary or desirable changes in statutes relating to TFFR, pursuant to Section 15-39.1-05.2.
- Receive notice from firefighters relief associations of each association's intent to provide a substitution monthly service pension, pursuant to Section 18-11-15.

Committee members were Representatives Joshua A. Boschee (Chairman), Bert Anderson, Claire Cory, Ron Guggisberg, Mitch Ostlie, Matthew Ruby, and Paul J. Thomas and Senators Brad Bekkedahl, Randy A. Burckhard, Dick Dever, Tim Mathern, Kristin Roers, and Shawn Vedaa.

Representative George Keiser served on the committee until his death on December 22, 2021.

## 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 (RIO) 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 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 and years of service 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 years of 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) retirement plan and the defined benefit (DB) retirement 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 DB retirement plan is funded from employer contributions, employee contributions, and investment earnings. Contributions are calculated based on a percentage of gross pay. The DB retirement plan 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 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, 2021, and July 1, 2022. 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 2023 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 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, 2022, the actuarially determined contribution is 12.12 percent of payroll, compared to 12.37 percent on July 1, 2021. Therefore, the statutory employer contribution rate of 12.75 percent resulted in a contribution margin of .63 percent of payroll as of July 1, 2022.

As of June 30, 2022, the actuarial value of assets was \$3.13 billion, representing 103.6 percent of the fair value of assets of \$3.02 billion. The actuarial value of 103.6 of fair value 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, 2022, the consulting actuary determined the return on the fair value of assets was -6.1 percent. After gradual recognition of investment gains and losses under the actuarial smoothing method, the actuarial rate of return was 7.4 percent, which represents an experience gain when compared to the assumed rate of 7.25 percent. Based on the actuarial value of assets, the funded ratio increased to 69.9 percent, compared to 68.6 percent as of July 1, 2021. The net pension liability increased from \$1.05 billion as of June 30, 2021, to \$1.46 billion as of June 30, 2022.

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, 2022, compared to a deficiency of 1.6 percent as of June 30, 2021.

As of July 1, 2022, the fund had 11,802 active members and 9,438 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 41.3 years, and active members have 11.3 average years of service. Average compensation for active members was \$64,916. As of July 1, 2022, 9,438 retirees and beneficiaries were receiving total monthly benefits of \$251.9 million with the average monthly benefit amount for the retirees and beneficiaries being \$2,224.

### Public Employees Retirement System

The committee received annual actuarial valuation reports as of July 1, 2021, and July 1, 2022, 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 2023 are:

	Employee Rate	Employer Rate
PERS main system <sup>2</sup>	7.00%	7.35%
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	13.80%	20.20%

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. Main system employer rate of 7.35 percent is a blend of 7.12 percent for pre-2020 enrollees and 8.26 percent for members first enrolled after 2019.

<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 2023 are:

	Actuarial Contribution Rate	Statutory/Approved Contribution Rate	Statutory Rate Excess - Deficiency
PERS main system	21.70%	14.35%	(7.35%)
Judges' retirement system	19.90%	25.52%	5.62%
Public safety system with prior PERS main system service	16.94%	15.31%	(1.63%)
Public safety system without prior PERS main system service	14.66%	13.43%	(1.23%)
Highway Patrolmen's retirement system	53.15%	34.00%	(19.15%)
RHIC	1.35%	1.14%	(.21%)

The following is a comparison of this year's total actuarial contribution rates to last year's rates:

	Fiscal Year 2022	Fiscal Year 2023
PERS main system	19.46%	21.70%
Judges' retirement system	16.62%	19.90%
Public safety system with prior PERS main system service	14.86%	16.94%
Public safety system without prior PERS main system service	12.81%	14.66%
Highway Patrolmen's retirement system	45.46%	53.15%
RHIC	1.08%	1.35%

## Demographics

The following demographic data was reported for active members as of July 1, 2022:

Category	Year Beginning July 1, 2022
<b>PERS main system</b>	
Number of active members	23,487
Average age	46.1
Average service credit	9.3
Total compensation	\$1,160,836,487
Average compensation	\$46,425
<b>Judges' retirement system</b>	
Number of active members	57
Average age	56.9
Average service credit	10
Total compensation	\$8,729,372
Average compensation	\$153,147
<b>Public safety system with prior PERS main system service</b>	
Number of active members	990
Average age	36.7
Average service credit	6.8
Total compensation	\$64,746,118
Average compensation	\$65,400
<b>Public safety system without prior PERS main system service</b>	
Number of active members	245
Average age	38.2
Average service credit	4.6
Total compensation	\$13,995,584
Average compensation	\$57,125
<b>Combined PERS fund</b>	
Number of active members	24,779
Average age	45.7
Average service credit	9.1
Total compensation	\$1,248,307,560
Average compensation	\$50,378



Category	Year Beginning July 1, 2022
<b>Highway Patrolmen's retirement system</b>	
Number of active members	151
Average age	38.2
Average service credit	11.5
Total compensation	\$12,267,230
Average compensation	\$81,240
<b>Job Service</b>	
Number of active members	1
Average age	66.7
Average service credit	47.3
Total compensation	\$61,332
Average compensation	\$61,332
<b>RHIC</b>	
Number of active members	19,018
Average age	47.9
Average service credit	11.7
Total compensation	\$1,032,405,030
Average compensation	\$54,286

### Funding Ratio

The following is a comparison of this year's actuarial funded ratio to last year's ratio:

	July 1, 2021		July 1, 2022	
	Unfunded Actuarial Liability	Funded Ratio	Unfunded Actuarial Liability	Funded Ratio
PERS main system	\$1,425,110,399	70.3%	\$1,750,648,216	67.0%
Judges' retirement system	(\$7,869,497)	114.7%	(\$6,721,299)	111.6%
Public safety system with prior PERS main system service	\$27,985,885	78.2%	\$38,432,559	74.9%
Public safety system without prior PERS main system service	(\$504,268)	103.5%	860,033	95.4%
Highway Patrolmen's retirement system	\$31,925,416	74.1%	\$43,238,171	69.0%
RHIC	\$74,673,124	68.6%	\$93,323,552	64.6%
Job Service	(\$30,942,632)	147.7%	(\$22,087,227)	131.3%

## CONSIDERATION OF RETIREMENT AND HEALTH PLAN LEGISLATIVE PROPOSALS

The committee established April 1, 2022, 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, Ice Miller for proposals with federal tax components, and 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 proposals 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 68<sup>th</sup> Legislative Assembly.

## Teachers' Fund for Retirement

The following is a summary of the proposals affecting TFFR over which the committee took jurisdiction and received an actuarial report, a summary of the actuarial analysis, and the committee's action on each proposal:

### Bill Draft No. 16

**Sponsor:** Representative Thomas

**Proposal:** Provides an exception for participation in TFFR for a teacher who has served at least 20 years in the armed forces of the United States who retired with full military retirement benefits.

**Actuarial analysis:** The change made by this bill draft does not impact the actuarial position of TFFR. The expected number of members who would choose not to participate in TFFR and PERS is not expected to have a significant impact on PERS.

**Committee report:** Favorable.

### Bill Draft No. 53

**Sponsor:** TFFR

**Proposal:** Provides for changes relating to TFFR benefits and duties of the TFFR Board.

**Actuarial analysis:** The changes made by the bill draft do not provide a material impact on the actuarial position of TFFR.

**Committee report:** Favorable.

## Public Employees Retirement System

The following is a summary of the proposals primarily affecting PERS over which the committee took jurisdiction and received an actuarial report, a summary of the actuarial analysis, and the committee's action on each proposal:

### Bill Draft No. 2

**Sponsor:** Senator Dave Oehlke

**Proposal:** Provides for PERS health benefits coverage of prosthetic devices.

**Actuarial analysis:** The expansion of prosthetic coverage will increase claims costs by .3 percent per year.

**Committee report:** Favorable.

### Bill Draft No. 8

**Sponsor:** Representative Todd Porter

**Proposal:** Expands the PERS Bureau of Criminal Investigation participation in the public safety retirement system to include all peace officers employed by the state, except for members of the State Highway Patrol who are covered by the highway patrol plan.

**Actuarial analysis:**

- Approximately 430 members would transfer from the main PERS plan to the public safety system with prior main service and new hires would begin in the public safety system.
- Because the public safety system contains more favorable retirement provisions than the main system there would be an increase in past service liability because of the transfer.
- The net impact of the transfer is expected to result in an increase in unfunded actuarial accrued liability to the public safety system due to an asset transfer that is about 78 percent of the actuarial accrued liability under the main system.
- Normal cost of benefits goes down from 12.97 to 11.91 percent because of the expansion.
- Employer contributions will increase.

**Committee report:** No recommendation.

### Bill Draft No. 34

**Sponsor:** Representative Jim Kasper

**Proposal:** Narrows the scope of duties of the Employee Benefits Programs Committee.

**Actuarial analysis:** Although there is no quantifiable financial impact of the proposed bill draft, the bill draft would render the Employee Benefits Programs Committee unable to authorize actuarial reports or other analysis resulting from consultation with experts and program advisors related to the potential impact of legislation. Therefore, there would be

no avenue to analyze the actuarial impact of legislative proposals on the PERS retirement plan or health insurance benefits.

**Committee report:** Unfavorable.

#### **Bill Draft No. 45**

**Sponsor:** Representative Kasper

**Proposal:** Revises the membership of the PERS Board and revises the process for approval of PERS health benefits coverage contracts.

**Actuarial analysis:** Although there is no quantifiable financial impact of the proposed bill draft, there are administrative or procedural implications.

**Committee report:** Unfavorable.

#### **Bill Draft No. 54**

**Sponsor:** PERS

**Proposal:** Provides for a change in the computation of final average salary for PERS retirement benefits.

**Actuarial analysis:** Although the change is expected to have a small, but likely immaterial financial impact on the PERS retirement system, there will not be an impact to the actuarial valuation results.

**Committee report:** Favorable.

#### **Bill Draft No. 71**

**Sponsor:** Supreme Court

**Proposal:** Provides for clerks of court to be state judicial employees.

**Actuarial analysis:** The change would have minimal actuarial impact.

**Committee report:** Favorable.

#### **Bill Draft No. 77**

**Sponsor:** Attorney General

**Proposal:** Revises the retirement benefits for peace officers employed by the Bureau of Criminal Investigation.

**Actuarial analysis:**

- Extends the projected year of full funding for the entire public safety system with prior main service from 2030 to 2034.
- Normal cost increases from 12.97 to 18.35 percent.

**Committee report:** Favorable.

#### **Bill Draft No. 87**

**Sponsor:** Representative Mike Lefor

**Proposal:** Provides for legacy fund funding of the PERS main plan.

**Actuarial analysis:** Would improve the PERS main plan funding, resulting in 100 percent funding by 2049.

**Committee report:** Favorable.

The committee took jurisdiction of five additional bill drafts the committee determined affect PERS. The committee will continue to hold meetings to receive the actuarial reports on these five bill drafts and will continue to take jurisdiction of legislative measures throughout the legislative session.

### **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 under state agency bonus programs to recruit or retain employees in hard-to-fill positions. During the 2019-21 biennium:

Agency	2019-21 Agency Authorized FTE Positions	July 1, 2019, to June 30, 2021 (Biennium Total)					
		Recruit		Referral		Retain	
		Number	Amount	Number	Amount	Number	Amount
Department of Agriculture	78.00					6	\$60,000
Bank of North Dakota	181.50			1	\$1,000	24	188,514
Department of Corrections and Rehabilitation	899.79	72	\$63,750	36	13,300	1	4,126
Department of Environmental Quality	165.50	2	12,500			10	64,250
Department of Financial Institutions	31.00	1	5,834			18	225,434
Governor's office	18.00	1	1,000				
State Department of Health	204.00	2	50,832			8	46,858
Highway Patrol	197.00	35	67,500				
State Historical Society	75.00					7	17,500
Department of Human Services	2230.23	165	806,402			223	1,399,980
Industrial Commission/ Department of Mineral Resources	112.75					174	735,735
Information Technology Department	402.00	16	32,500			77	183,209
Insurance Department	41.00					2	5,500
Commission on Legal Counsel for Indigents	40.00					4	7,580
Office of Management and Budget	112.00	1	5,000			6	20,417
Parks and Recreation Department	61.50	1	5,000				
Department of Public Instruction	89.25					1	5,000
Retirement and Investment Office	20.00	1	5,000				
Soybean Council	5.00					1	3,000
State Auditor's office	58.00					31	108,900
State Treasurer's office	7.00					1	8,402
Department of Trust Lands	28.00					1	(3,850)
Veterans' Home	120.72	1	682			89	295,471
Department of Water Resources	90.00					2	5,000
Workforce Safety and Insurance	260.14	3	7,042	7	3,500	1	1,500
Total		301	\$1,063,042	44	\$17,800	687	\$3,382,526

**NOTES:** Amounts paid are rounded to the full dollar value, agencies are listed only if they provided these types of bonuses during this period, and negative bonus amounts are due to a forfeited bonus when an employee terminated before the end of the commitment period.

For the 1<sup>st</sup> year of the 2021-23 biennium:

Agency	2021-23 Agency Authorized FTE Positions	Active Employee Count (June 2022)	July 1, 2021, to June 30, 2022 (Fiscal Year Total)					
			Recruit		Referral		Retain	
			Number	Amount	Number	Amount	Number	Amount
Bank of North Dakota	173.00	161	6	\$21,833			2	\$11,246
Department of Corrections and Rehabilitation	907.79	833	85	85,084	20	\$8,467	22	89,000
Department of Environmental Quality	166.00	149					8	88,945
Department of Financial Institutions	31.00	28					1	(4,612)
Highway Patrol	193.00	184	12	30,000				
Department of Human Services	2,249.33	2,010	108	522,859	59	15,100	189	1,114,965
Industrial Commission/ Department of Mineral Resources	108.25	95					84	425,000
Information Technology Department	479.00	437	2	7,000			2	11,000
Job Service North Dakota	156.61	145	1	5,000				
Commission on Legal Counsel for Indigents	40.00	36					2	11,000
Office of Management and Budget	108.00	102					2	18,643
Department of Public Instruction	86.25	79					22	104,000
Retirement and Investment Office	19.00	17	1	20,000			1	4,444
School for the Deaf	44.61	46	1	2,500				
State Auditor's office	61.00	53					28	107,000
Tax Commissioner	118.00	106					2	6,000
Veterans' Home	114.79	113	17	37,619	1	\$1,500	15	32,523
Department of Water Resources	90.00	81					17	62,500
Workforce Safety and Insurance	260.14	237	4	9,300				
Total			237	\$741,195	80	\$25,067	397	\$2,081,654

**NOTES:** Amounts paid are rounded to the full dollar value, agencies are listed only if they provided these types of bonuses during this period, and negative bonus amounts are due to a forfeited bonus when an employee terminated before the end of the commitment period.

### 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 2019-21 biennium, state employee service awards totaled \$437,366.94; employer-paid costs of training or educational courses, including tuition and fees, totaled \$6,029,794.05; and employer-paid professional organization membership and service club dues for individuals totaled \$1,292,949.97. The following schedule is a summary of the information presented for the 2019-21 biennium:

Agency	2019-21 Authorized FTE 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
101 - Governor's office	18.00		\$1,609.10	\$400.00
108 - Secretary of State	32.00	\$1,721.00	1,234.80	12,878.00
110 - Office of Management and Budget	112.00	7,296.93	22,660.30	9,548.28
112 - Information Technology Department	402.00	15,581.05	250,592.36	91,342.15
117 - State Auditor's office	58.00	4,403.50	35,667.14	11,548.00
120 - State Treasurer	7.00	200.00	1,104.00	6,720.00
125 - Attorney General	246.00		7,252.50	32,075.00
127 - Tax Commissioner	123.00	11,596.00	45,191.49	3,685.00
140 - Office of Administrative Hearings	5.00	1,290.39		
180 - Judicial branch	363.00	18,976.10	148,025.59	334,203.91
188 - Commission on Legal Counsel for Indigents	40.00		1,639.00	18,725.35
190 - Retirement and Investment Office	20.00	1,461.00	19,523.90	15,190.00
192 - Public Employees Retirement System	34.50	1,435.00	9,580.75	25,370.98
195 - Ethics Commission	2.00			445.00
201 - Department of Public Instruction	89.25	5,058.24	8,411.55	41,249.75
226 - Department of Trust Lands	28.00	1,987.65	8,952.73	7,745.00
250 - State Library	27.75	2,450.10		24,411.00
252 - School for the Deaf	44.61		3,488.08	
253 - North Dakota Vision Services - School for the Blind	27.90		5,398.62	2,890.00
270 - Department of Career and Technical Education	52.30	3,096.13	2,854.00	6,289.00
301 - State Department of Health	204.00	8,196.50	179,735.40	51,201.74
303 - Department of Environmental Quality	165.50	12,545.00	74,726.54	4,985.00
313 - Veterans' Home	120.72	5,403.95	10,154.42	1,959.00
316 - Indian Affairs Commission	4.00		2,863.91	
321 - Department of Veterans' Affairs	7.00			4,525.00
325 - Department of Human Services	2,230.23	112,130.00	462,242.90	33,549.19
360 - Protection and Advocacy Project	28.50	2,939.17		
380 - Job Service North Dakota	172.61	13,486.00	7,961.00	425.00
401 - Insurance Department	41.00	1,244.95	9,880.23	5,940.00
405 - Industrial Commission	112.25	4,382.51	17,575.42	17,500.00
406 - Department of Labor and Human Rights	14.00	725.00	4,081.82	
408 - Public Service Commission	43.00	3,429.50	1,075.00	3,180.46
412 - Aeronautics Commission	7.00	150.00		
413 - Department of Financial Institutions	31.00		1,760.00	
414 - Securities Department	10.00	900.00	19,221.69	5,927.00
485 - Workforce Safety and Insurance	260.14	22,729.56	137,097.00	85,088.06
504 - Highway Patrol	197.00		424,592.48	41,223.42
530 - Department of Corrections and Rehabilitation	899.79	52,032.39	207,278.68	153,331.09
540 - Adjutant General	222.00	13,784.90	3,412,894.77	28,468.95
601 - Department of Commerce	61.80	2,175.80	14,723.72	1,261.00
602 - Department of Agriculture	78.00	4,586.00	16,539.92	33,562.61
607 - Milk Marketing Board		500.00		
616 - State Seed Department		2,207.50		1,440.00
701 - State Historical Society	75.00	5,851.75	25,760.70	1,478.00
720 - Game and Fish Department	165.00	14,853.60	4,255.00	125,203.13
750 - Parks and Recreation Department	61.50	7,279.77	6,383.18	5,351.00
770 - State Water Commission	90.00	6,350.00	4,670.90	7,448.00
801 - Department of Transportation	982.00	62,930.00	411,133.46	35,185.90
Total		\$437,366.94	\$6,029,794.05	\$1,292,949.97

### **Health Insurance Mandate Procedure**

Under Section 54-03-28, the committee considered issues of timing and equity relating to setting a deadline for submission of bills or bill drafts providing for health insurance mandates. The committee recognized the importance of allowing newly elected legislators the opportunity to introduced legislation providing for a health insurance mandate but also the importance of receiving the required cost-benefit analysis before the deadline to report bills out of committee.

### **Recommendation**

The committee recommended legislators who plan to introduce a legislative measure that provides for a health insurance mandate under Section 54-03-28 be required to provide Legislative Council a copy of the proposed legislative measure by the close of business on the second Friday following adjournment of the Organizational Session.

### **Federal Requirements**

Neither TFFR nor PERS notified the committee under Sections 15-39.1-35, 39-03.1-29, 54-52-23, and 54-52.1-08.2 of any federal requirements necessitating changes in the laws relating to TFFR or PERS.

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

The committee was notified by TFFR under Section 15-39.1-05.2(5) of its intent to introduce Bill Draft No. 53, which would provide for changes relating to TFFR benefits and duties of the TFFR Board.

### **Firefighters Relief Associations**

No firefighters relief association notified the committee 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 RIO, including:

- An overview of RIO;
- The status of investments of the State Investment Board; and
- A summary of RIO's strategic plan.

Since 2010, assets under the management of the State Investment Board have increased by 320 percent, to approximately \$20 billion. Performance of the TFFR, PERS, and legacy funds as of June 30, 2022, were:

	<b>TFFR</b>	<b>PERS</b>	<b>Legacy</b>
Total fund - Year-to-date	(11.2%)	(11.6%)	(13.4%)
Total fund - 1 year	(6.2%)	(6.7%)	(10.1%)
Total fund - 3 year	7%	7.1%	4.8%
Total fund - 5 year	7.2%	7.2%	5.4%

### **Public Employees Retirement System**

During the interim, the committee received periodic reports from PERS, including:

- An overview of the PERS agency;
- An overview of the PERS retirement plans and group insurance plans;
- An overview of the contracts PERS enters under Chapters 54-52, 54-52.1, and 54-52.6; and
- A summary of the PERS strategic plan for 2022 to 2024.

# 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.

In addition to its statutory study responsibilities, the committee was assigned the following three studies for the 2021-22 interim:

- House Bill No. 1159 (2021) directed a study of natural gas and propane infrastructure development in the state. The study required consideration of the current infrastructure available for natural gas and propane, challenges related to the development of natural gas and propane infrastructure, community needs for natural gas and propane infrastructure, and a cost-benefit analysis of any state incentives to encourage the development of natural gas and propane infrastructure.
- Section 2 of House Bill No. 1455 (2021) directed a study of the need, cost, effect, and appropriate process for bonding and ensuring reclamation of coal conversion facilities. The study required an examination and assessment of the methods and amounts of financial assurance and schedules, the interaction of economics and the statutes, rules, and policies relating to the remaining useful life and early retirement of coal conversion facilities, the role of the Public Service Commission (PSC) in all electrical generation retirement, and the appropriate involvement of the public and local communities and political subdivisions in the retirement process. The study also required an evaluation of the effectiveness of government programs and incentives relating to energy production, reliability, and the state's role in that process.
- Senate Bill No. 2217 (2021) directed a study of deductions for postproduction costs under oil and gas leases. The study required 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. The study also required an analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies, and the infrastructure necessary to enhance oil and natural gas value. The study could include consideration of the desirability and feasibility of expanding the use and market access of natural gas, including value-added energy opportunities within the state.

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

- An annual report from the State Energy Research Center regarding its research activities and accomplishments, pursuant to Section 15-11-40.
- A biennial report from the North Dakota Transmission Authority regarding its activities, pursuant to Section 17-05-13.
- A biennial report from the Energy Policy Commission regarding recommendations for a comprehensive energy policy, pursuant to Section 17-07-01.
- A report, beginning December 2014 and every 4 consecutive years thereafter, from the Industrial Commission regarding the amount of money in the carbon dioxide storage facility trust fund and the amount of fees needed to satisfy the fund's objectives, pursuant to Section 38-22-15.
- A biennial report from the High-Level Radioactive Waste Advisory Council regarding its findings, pursuant to Section 38-23-08.
- A biennial report from the North Dakota Pipeline Authority regarding its activities, pursuant to Section 54-17.7-13.
- A report from the Clean Sustainable Energy Authority regarding its activities and the program's financial impact on state revenues and the state's economy, pursuant to Section 54-63.1-04.
- A report from a coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions and receives a tax credit, pursuant to Section 57-60-02.1.
- A report from the Energy and Environmental Research Center (EERC) regarding the results and recommendations of the underground energy storage study conducted under Section 14 of Senate Bill No. 2014 (2021).

- A report from the EERC regarding the study on development and implementation of hydrogen energy in the state conducted under Section 15 of Senate Bill No. 2014 (2021).
- A report from the Department of Environmental Quality regarding carbon reduction initiatives, rules, or policies that will affect North Dakota residents and industries under Section 7 of Senate Bill No. 2024 (2021).
- A report from the Insurance Commissioner regarding the availability, cost, and risks associated with insurance coverage in the lignite coal industry under Senate Bill No. 2287 (2021).

Committee members were Senators Jessica Bell (Chairman), Brad Bekkedahl, Kathy Hogan, Curt Kreun, Dale Patten, and Merrill Piepkorn and Representatives Dick Anderson, Tracy Boe, Mike Brandenburg, Alisa Mitskog, Todd Porter, and Don Vigasaa.

## **COMPREHENSIVE ENERGY STUDY**

The committee is responsible for studying a comprehensive energy policy for the state pursuant to Section 54-35-18. 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 agriculture 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 updates from the commission's three subcommittees--public policy, research and development, and infrastructure. The commission did not have any specific energy policy recommendations for the 2021-22 interim, but continues to promote North Dakota's energy resources. The commission reviewed the benefits, location, and safety of using carbon dioxide captured from industrial sources like power plants, ethanol plants, and gas processing plants for enhanced oil recovery. The commission expressed its support for the development of carbon capture, usage and storage, and carbon dioxide enhanced oil recovery, and suggested the state continue its environmental, social, and governance investment criteria initiative to assist businesses, market state investment opportunities, and continue growing the state's energy industry.

### **Conclusion**

The committee makes no recommendation regarding the comprehensive energy policy study.

## **NATURAL GAS AND PROPANE INFRASTRUCTURE DEVELOPMENT STUDY**

The Legislative Management assigned the committee the responsibility to study natural gas and propane infrastructure development in the state. The committee received information from state agencies and the propane industry regarding the infrastructure available for natural gas and propane, challenges related to the development of natural gas and propane infrastructure, community needs for natural gas and propane infrastructure, and a cost-benefit analysis of any state incentives to encourage the development of natural gas and propane infrastructure.

### **Background**

#### **Infrastructure Cost Ranges**

The committee received information regarding the cost ranges for various types of natural gas and propane infrastructure.

Infrastructure	Cost Ranges
HDPE lateral pipeline	\$400 - \$500k per mile
Steel lateral pipeline	\$750k - \$1 million per mile
Pipeline interconnections	\$300k - \$3.5 million
Town border stations	\$150k - \$500k
Distribution systems	\$750k - \$2 million

Source: Montana-Dakota Utilities Co.

#### **State Tax Incentives for Gas**

Extracted oil and natural gas are subject to the oil and gas gross production tax and the oil extraction tax. Materials used in the extraction of oil and gas may be subject to sales or use taxes. Pipelines and other infrastructure used to transport oil and gas may be subject to property taxes. Generators of electricity from sources other than coal or wind,



with a generation capacity of 100 kilowatts or more, are subject to payments in lieu of taxes pursuant to Section 57-33.2-04. Payments in lieu of taxes consist of a tax of 50 cents per kilowatt times the rated capacity of the generation unit, plus a tax of 1 mill per kilowatt-hour of electricity generated by the production unit during the taxable period.

Pursuant to Chapter 57-51, a gross production tax of 5 percent of the gross value at the well is levied upon all oil produced in the state except a royalty interest in oil produced from an interest held by an organized Indian tribe or produced from a state, federal, or municipal holding. A gross production tax is levied upon all gas produced in the state and is calculated by multiplying taxable production by an annually adjusted flat rate per thousand cubic feet. Exemptions from the gross production tax include:

- 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 pursuant to Section 57-51-02.4.
- Gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well pursuant to Section 57-51-02.5.
- 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 pursuant to Section 57-51-02.6.

Additional state tax incentives pertaining to oil and gas include:

- A sales and use tax exemption for materials used to reduce emissions, increase efficiency, or enhance the reliability of equipment at a new or existing oil refinery or gas processing plant pursuant to Sections 57-39.2-04.2 and 57-40.2-04.2.
- A sales and use tax exemption for gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas pursuant to Sections 57-39.2-04 and 57-40.2-04.
- A sales tax exemption for gross receipts from sales of natural gas or sales of fuels used for heating purposes pursuant to Section 57-39.2-04.
- A sales and use tax exemption for materials used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state pursuant to Sections 57-39.2-04.5 and 57-40.2-03.3.
- A sales and use tax exemption for materials used to construct or expand a processing facility to produce liquefied natural gas pursuant to Sections 57-39.2-04.10 and 57-40.2-03.3.
- A sales tax exemption for materials 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 pursuant to Sections 57-39.2-04.14 and 57-40.2-03.3.
- A property tax exemption for equipment, machinery, tools, materials, and property necessary, and being used at the site of a producing well, for the production of oil and gas pursuant to Section 57-51-04. The property tax exemption does not apply to drilling rigs, gasoline extraction or absorption plants, water systems, fuel systems, hospitals, residences, and various other buildings.
- A property tax exemption for any equipment directly used for enhanced recovery of oil or natural gas pursuant to Section 57-60-06. The property tax exemption does not apply to the land on which the equipment is located.
- A property tax exemption for property, exclusive of land, and necessary associated equipment for the transportation or storage of carbon dioxide for use in enhanced recovery of oil or natural gas pursuant to Section 57-06-17.1. The property tax exemption applies for the first 10 full taxable years following the initial operation of the pipeline but does not apply to the land on which the property and associated equipment is located.

### **Testimony**

The committee received information and testimony from representatives of the propane industry, Pipeline Authority, Propane Gas Association, and the Tax Department.

Testimony indicated North Dakota is the 11<sup>th</sup> largest gas-producing state. There are 91 communities served with natural gas in North Dakota, totaling approximately 150,000 customers, and 366 communities unserved with natural gas, totaling approximately 46,000 homes. The three driving forces for new gas pipelines are supply push, demand pull, and system reliability.

The committee was informed the proposed Grasslands South project will repurpose the Grasslands Pipeline, provide access to the Baker storage field, and create up to 94,000 equivalent dekatherms per day of new firm natural gas transportation capacity from the NBP-Manning receipt location, or other new or existing receipt locations into WBI Transmission's Line Section 26, to new or existing delivery locations on WBI Transmission's Line Sections 14, 26, and 29. The design of the project includes pipeline facilities and measurement facilities. The targeted in-service date is fall 2023.

The proposed Bison Xpress project would add 430 million cubic feet per day of capacity on the Northern Border Pipeline and use the existing but empty Bison Pipeline to connect Bakken volumes to the Cheyenne hub in the Rockies. The capacity boost on the Northern Border Pipeline would be achieved through horsepower additions to compressor stations 4, 5, and 6 located in North Dakota. The capacity expansions in North Dakota would allow the Northern Border Pipeline to deliver 430 million cubic feet per day into the Bison pipeline, and with additional facility modifications on Bison, allow the gas to flow into the eastern Rockies. The targeted in-service date is early 2026.

The North Bakken Expansion Project consists of approximately 100 miles of new pipeline and compression and ancillary facilities to transport natural gas out of core Bakken production areas in western North Dakota. The project starts near Tioga and extends to a new connection point with Northern Border Pipeline in McKenzie County. Construction began in July 2021. The pipeline was placed in service on February 1, 2022. The expansion consists of 62.8 miles of 24-inch diameter natural gas pipeline that provides up to 250 million cubic feet per day of natural gas transportation service and provides residue gas service from north of Lake Sakakawea to Northern Border Pipeline in McKenzie County.

The committee received testimony indicating Senate Bill No. 2328 (2021) provides a producer employing a flare mitigation system installed on a qualifying well on or after June 30, 2021, a temporary credit against the oil extraction tax. The credit is equal to 75 cents per one million British thermal units of flare mitigation resulting from the onsite flare mitigation system. The credit may be claimed for up to 12 months per well and may not exceed \$6,000 per well per month. The credit does not apply to production from wells located within the exterior boundaries of the Fort Berthold Reservation unless the Chairman of the Mandan, Hidatsa, and Arikara Nation submits to the Tax Commissioner a written request for the credit to apply. The credit is effective through June 30, 2023. The Tax Department has received certifications for 16 wells. The first certifications were received in December 2021. Certifications are issued by the Industrial Commission. The total value of credits received by the 16 wells is estimated to be \$353,000 based on projected production.

### **Committee Considerations**

The committee acknowledged several positive steps have been taken to promote and expand natural gas and propane infrastructure development to unserved and underserved communities in the state. Committee members recognized additional funds and tax exemptions might be needed to encourage improvement and expansion of natural gas and propane infrastructure. The committee indicated the state's tax incentive provisions for oil and gas are operating as intended.

### **Conclusion**

The committee makes no recommendation regarding its study of natural gas and propane infrastructure development.

## **COAL CONVERSION FACILITY BONDING AND RECLAMATION STUDY**

The Legislative Management assigned the committee the responsibility to study the need, cost, effect, and appropriate process for bonding and ensuring reclamation of coal conversion facilities. The committee received information from the PSC, utilities and cooperatives, and representatives of local communities and political subdivisions regarding the methods and amounts of financial assurance and schedules; the interaction of economics and the statutes, rules, and policies relating to the remaining useful life and early retirement of coal conversion facilities; the role of the PSC in all electrical generation retirement; and the appropriate involvement of the public, local communities, and political subdivisions in the retirement process.

### **Background**

#### **General Jurisdiction of the Public Service Commission**

Section 49-02-01 sets out the general jurisdiction of the PSC. That section provides the general jurisdiction of the PSC extends to:

- Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
- Telecommunications companies engaged in the furnishing of telecommunications services as provided for in Chapter 49-21.

- Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
- Electric utilities engaged in the generation and distribution of light, heat, or power.
- Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
- All heating utilities engaged in the distribution of heat.
- All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

Section 49-02-02 authorizes the PSC to require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law. The 1975 Legislative Assembly passed Senate Bill No. 2050, the North Dakota Energy Conversion and Transmission Facility Siting Act, codified as Chapter 49-22. This chapter provides protection to individual landowners by regulating the siting of transmission and conversion facilities, such as granting the PSC authority to issue certificates of site compatibility or route permits for electric energy conversion or transmission facilities.

### **Solar and Wind**

Section 49-02-27 requires the PSC to adopt rules governing the decommissioning of commercial wind energy conversion facilities and authorizes the PSC to adopt rules governing the decommissioning of commercial solar energy conversion facilities. Under the authority granted by Section 49-02-27, the PSC adopted North Dakota Administrative Code (NDAC) Chapters 69-09-09 and 69-09-10, pertaining to wind and solar facility decommissioning. Both chapters provide the owner of a wind or solar facility is responsible for decommissioning the facility and for all costs associated with decommissioning. In addition, an owner of a wind or solar facility is required to begin decommissioning within 12 months after abandonment or the end of the facility's useful life. A facility is presumed to be abandoned if, after commencement of construction and before completion, a period of 24 consecutive months has passed with no significant construction. A facility is presumed to be at the end of its useful life if its annual capacity factor is less than 10 percent for 2 consecutive years for wind facilities and less than 5 percent for solar facilities. Decommissioning requirements for wind or solar facilities include site restoration and reclamation to the approximate original topography that existed before construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence before the disturbance, and grading and restoring topsoil of areas disturbed by the facility and reseeding according to natural resource conservation service recommendations.

### **Coal Mining**

Under Chapter 38-14.1, a surface coal mining operator in North Dakota must supply a performance bond before the PSC may issue a mining permit. Section 38-14.1-16 requires a performance bond and establishes the amount and sufficiency of the required surety. The Public Service Commission is required to set the bond amount sufficient to complete the reclamation plan in the event of forfeiture. The bond for the permit area must be at least \$10,000. The bond must cover that area of land within the permit area upon which the permittee will initiate and conduct surface coal mining and reclamation operations for the ensuing year. The reason for requiring a performance bond is to ensure land disturbed for coal mining will be reclaimed at no cost to the state or to the public if an operator's mining permit is revoked or the operator goes out of business.

### **State Tax Incentives for Coal**

The coal severance tax is imposed on the act of removing coal from the earth pursuant to Chapter 57-61. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The coal severance tax applies to all coal severed for sale or industrial purposes, except coal used for heating buildings in the state, coal used by the state or any political subdivision of the state, and coal used in agricultural processing facilities in the state or adjacent states. 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. 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. A county also may grant the operator of a mine a partial or complete exemption from up to 70 percent of the coal severance tax for a period not to extend past June 30, 2026, pursuant to Section 57-61-01(2).

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.

In addition, there is a:

- Sales and use tax exemption for machinery or equipment used to produce coal from a new mine. The exemption for each mine is limited to the first \$5 million of sales and use tax paid pursuant to Section 57-39.2-04.8.

- Sales tax exemption for materials used to construct or expand a facility used to extract or process byproducts associated with coal gasification pursuant to Section 57-39.2-04.11.
- Sales and use tax exemption for materials used to construct, expand, repower, or add environmental upgrades to an electrical generation plant, and all additions thereto, which processes or converts coal into electrical power pursuant to Sections 57-39.2-04.2 and 57-40.2-04.2.
- Sales and use tax exemption on gross receipts from the initial sale of beneficiated coal and the sale of coal which is exempt from the coal severance tax pursuant to Sections 57-39.2-04 and 57-40.2-04.
- Property tax exemption for each coal conversion facility and any carbon dioxide capture system located at a coal conversion facility pursuant to Section 57-60-06. The property tax exemption does not apply to the land on which the facility or capture system is located.

### **Testimony**

The committee received information and testimony from a representative of a political subdivision indicating the closure of Coal Creek Station would have caused a regional depression. Three high schools would have been combined into one and the housing market and values in the central part of the state would have dropped. Testimony indicated although reclamation occurs immediately after coal is removed, the land may not be released for several years due to bonding procedures and the rehabilitation process required to occur on the land. The committee was informed the Legislative Assembly should learn from the obstacles Rainbow Energy Center faced when acquiring Coal Creek Station. Testimony recommended the enactment of regulatory schemes and financial incentives to help ease the burden and legal liabilities incurred by a sale or transfer similar to which occurred with the Coal Creek Station closure to avoid negative economic impacts.

Testimony from a representative of the PSC indicated there are no legal requirements regarding the decommissioning time schedules or financial assurance requirements for coal or natural gas generation facilities. Requiring decommissioning time schedules and financial assurances for coal and natural gas generation facilities will result in additional costs that will be passed on to consumers and create an economic burden for facilities. The three coal plants that have retired this century voluntarily decommissioned or are in the process of decommissioning. In the case of a facility being abandoned, a facility generally is owned by the energy generator, which has its own incentive to decommission and reclaim. Facilities also have a relatively small footprint. Rules and law do not address remaining useful life and early retirement of facilities. Facilities can last far beyond their original expected useful life if properly maintained and upgraded. Remaining useful life is more of an accounting concept than an accurate depiction of how much longer a generation facility can remain useful. The Public Service Commission has limited authority over cooperatives, which own the vast majority of North Dakota's coal generation. In the case of regulated utilities, the PSC provides input through rate recovery allowance or disallowance, advance determinations of prudence, and the new tools established in the 2021 legislative session for integrated resource plans.

Testimony from representatives of the utilities and cooperatives indicated there is a long history of precedent and obligation through self-governing principles to maintain and operate conversion facilities in the most environmentally responsible manner and also to restore and reclaim the land when infrastructure is taken out of service. Testimony indicated the utilities and cooperatives do not envision a circumstance where less than full site reclamation would occur.

### **Committee Considerations**

The committee did not indicate a desire to add any legal requirements regarding decommissioning time schedules or financial assurances requirements for coal or natural gas generation facilities. The committee did not receive any testimony from interested parties indicating less than full site reclamation is occurring in the state by any utility or cooperative. The committee acknowledged legislation may be needed to address coal and natural gas generation reclamation if maintaining, operating, or decommissioning conversion facilities presents an environmentally irresponsible mitigation process or if there is an instance of less than full site reclamation in the state.

### **Conclusion**

The committee makes no recommendation regarding its study of coal conversion facility bonding and reclamation.

## **OIL AND GAS LEASE POSTPRODUCTION DEDUCTIONS STUDY**

The Legislative Management assigned the committee the responsibility to study deductions for postproduction costs under oil and gas leases. The committee received information from representatives of the oil and gas industry, representatives of royalty owner associations, the Department of Mineral Resources, the Department of Trust Lands, the Attorney General, and royalty owners, regarding 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.

## Background

### North Dakota Law

In North Dakota, royalties due to mineral owners for the production and sale of oil and gas is governed by contract law, meaning the express oil and gas lease contract entered between the mineral owner and the lessee. Likewise, the manner in which royalties are calculated depends on the lease royalty clause. A royalty clause typically sets forth the point at which the value of the oil is determined and the deductions that may be applicable.

In *Bice v. Petro-Hunt, L.L.C.*, 2009 ND 124, the North Dakota Supreme Court joined the majority of states following the "at the well" rule for calculating royalties on oil and gas leases. The "at the well" rule defines the wellhead as the appropriate point for royalty calculation. Section 38-08-06.3 requires a person that makes a payment to an owner of a royalty interest in land for the purchase of oil or gas produced from that royalty interest to provide with the payment to the royalty owner an information statement that will allow the royalty owner to clearly identify the amount of oil or gas sold and the amount and purpose of each deduction made from the gross amount due. A violation of Section 38-08-06.3 is a Class B misdemeanor. Section 38-08-06.3 also tasks the Industrial Commission with approving the forms the statements must be on and adopt rules relating to the information the statements must contain.

### State Regulations

North Dakota Administrative Code Chapter 43-02-06 sets forth the rules adopted by the Industrial Commission under Section 38-08-06.3 relating to royalty statements. North Dakota Administrative Code Chapter 43-02-06 provides the information that must be included on the check stub whenever payment is made for oil or gas production to an interest owner. The required information includes:

- The price;
- The month and year during which sales occurred for which payment is being made;
- The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well;
- The owner's share of sales value less taxes and deductions; and
- The amount and purpose of each owner adjustment or correction made.

North Dakota Administrative Code Chapter 43-02-06 requires an operator or payor to provide a mineral owner with a statement identifying the spacing unit for the well, and the effective date of the spacing unit change or decimal interest change if applicable, the net mineral acres owned by the mineral owner, the gross mineral acres in the spacing unit, and the mineral owner's decimal interest that will be applied to the well. This statement must be provided within 120 days after the end of the month of the first sale of production from a well or change in the spacing unit of a well or a decimal interest in a mineral owner.

### Postproduction Deductions in Other States

Generally, states can be divided into two categories--those that follow the "at the well" rule and those that follow the marketable-product rule. Under the marketable-product rule, lessees impliedly covenant to bear the costs of getting gas into marketable condition and transporting it to market. A majority of oil and gas jurisdictions, including North Dakota, adhere to the "at the well" rule and calculate the royalty based on the value of the gas at the wellhead. In these jurisdictions, the workback method is used to calculate the value of the gas at the wellhead. A minority of jurisdictions have rejected the workback method. These jurisdictions, which include Colorado, Kansas, Oklahoma, and West Virginia, do not calculate the royalty based on the purported value of the gas at the wellhead. Instead, these jurisdictions calculate the royalty at the point the gas first becomes a marketable product--the marketable-product rule.

### Testimony

The committee received information and testimony from representatives of the oil and gas industry, representatives of royalty owner associations, the Department of Mineral Resources, the Department of Trust Lands, the Attorney General, and royalty owners regarding the study of deductions for postproduction costs under oil and gas leases. Testimony received from the Department of Mineral Resources indicated royalties are paid on the value of the oil and gas at the well site, which is the first point of custody transfer. For oil, the value at the well site is the gross value minus transportation costs associated with moving the oil from the well site to the point of sale under the first arm's-length contract. For gas, the value at the well site is the gross value minus transportation costs associated with making the gas and natural gas liquids marketable and moving the gas and natural gas liquids from the well site to the point of sale under the first arm's-length contract. The testimony indicated the three options for computing the transportation costs are:

- The actual costs;

- The applicable common carrier rate established by the PSC or the appropriate federal jurisdictional agency; or
- The reasonable actual operating and maintenance expenses of the transportation system, overhead costs directly attributable and allocable to that operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment.

Testimony indicated for oil under a non-arm's-length transportation contract, where the operator or the operator's affiliate perform transportation services, the transportation allowance is based on reasonable, actual costs, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return. For gas under a non-arm's-length transportation contract, including situations in which the operator or the operator's affiliate provide processing and transportation services. The transportation deduction is based on reasonable, actual costs.

The committee received information indicating the Industrial Commission approved 16 wells representing a minimum flared volume reduction of 2.5 million cubic feet per day, and established the following natural gas capture targets:

- 74 percent for October 1, 2014, through December 31, 2014.
- 77 percent for January 1, 2015, through March 31, 2016.
- 80 percent for April 1, 2016, through October 31, 2016.
- 85 percent for November 1, 2016, through October 31, 2018.
- 88 percent for November 1, 2018, through October 31, 2020.
- 91 percent beginning November 1, 2020.

Testimony received from the Attorney General and the Department of Trust Lands indicated all leases issued by the Board of University and School Lands since 1979 are gross proceeds leases, with the board to be paid royalties based "on an amount equal to the full value of all consideration for such products in whatever form or forms, which directly or indirectly compensates, credits, or benefits lessee." The department could not address the deductions that may or may not be allowed on each lease because private mineral owners' lease terms vary from lease to lease. The department has a royalty reporting form that is required for reporting royalties under NDAC Section 85-06-01-12. The department does not prepare the mineral royalty statements. The department is aware of instances in which operators have deducted negative royalty payments for gas which have more than offset the value of other products. The department indicated a mineral royalty owner always should receive a positive royalty payment for all products. A royalty, by definition, requires a positive payment.

Testimony received from Hess Corporation indicated since 2014, Hess Corporation has paid over \$2.3 billion to royalty owners, and royalty payments are paid pursuant to approximately 20,000 oil and gas leases. The lease governs the relationship between the royalty owner ("lessor") and working interest owner ("lessee") for as long as oil and gas is produced. The operator of a unit pays royalties in accordance with the terms of the lease. Royalty owners often negotiate leases to secure benefits, including an upfront per acre signing bonus to enter the lease; royalty percentage, point of valuation, and prohibited deductions; increases or specifications as to how royalties are paid; if applicable, permitted surface uses, including where drilling may occur; minimum or shut-in royalties when a unit is not producing; and water use and associated payment.

Testimony received from royalty owners and associations representing royalty owners indicated postproduction deductions from oil and gas leases are difficult to understand and can account for a large value deduction from the royalty payment. Oil and gas producers are for-profit businesses and need to make a profit to continue to conduct business. According to testimony, it is not uncommon to see gathering, drying, compression, and transportation deductions of over 80 percent of the gas royalty. For this reason, it was argued, using the "comparable sales method" would be the fairest method to calculate the value of oil and gas. In addition, testimony indicated actions the state can take to help mineral owners could include prohibiting lease-line allocation wells, maintaining a list of valid mailing addresses for oil companies on the Department of Mineral Resources' website, establishing a penalty for an oil company that does not provide a mineral owner with a response within 30 days as required under NDAC Section 43-02-06-01(12), and prohibiting postproduction deductions unless a lease specifically allows for the deductions.

### **Committee Considerations**

Committee members generally empathized with the concerns and frustrations voiced by royalty owners regarding postproduction deductions and the request to have the Legislative Assembly restrict or regulate current oil and gas lease terms through legislation that could have retroactive application. However, the committee recognized Section 18 of Article I of the Constitution of North Dakota prohibits a law impairing contracts. In addition, courts generally are reluctant to uphold statutes that impair or interfere with existing contracts retroactively due to the inherent principle of a party's

right to enter contracts freely. Several members of the committee expressed a desire to work with various stakeholders on the issue and introduce a bill during the 2023 legislative session.

### **Conclusion**

The committee makes no recommendation regarding its study of oil and gas lease postproduction deductions.

### **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 State Energy Research Center has eight new invention disclosures, including methods of production of graphene and its derivatives from coal intermediates, methods of upgrading coal to produce enhanced graphene precursors, and automatic detection of buried pipelines and spills. In addition, 59 innovative research concepts were brought forward for potential funding from the State Energy Research Center in three rounds of internal solicitation. Twenty-five new research projects were selected through significant vetting of the proposed concepts via a peer-led review process. The selected projects focus on coal, oil and gas, and renewable energy, and include methods of optimized extraction and utilization, critical element extraction, new materials, and environmental protection.

### **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, Basin Electric Power Cooperative is constructing a new 230 kilovolt line from Tioga west to Ross. The line will complement a 115 kilovolt line that Mountrail Williams Electric is building from that location to New Town. The Midcontinent Independent System Operator queue contains 10 projects for a total of 2,390 megawatts (MW). This queue is reduced from 2,700 MW in 2020. The Minnkota queue contains six projects for a total of 350 MW. This queue remains the same as in 2020. The Southwest Power Pool queue contains 26 projects for a total of 5,045 MW. This queue has increased from 2,902 MW 2 years ago.

Portions of North Dakota served by the Southwest Power Pool experienced short rolling blackouts on 2 days in February 2021 due to winter storm Uri. Even though state generating resources operated well, North Dakota was affected because North Dakota is part of the power pool. Lack of available generation was the primary cause of the event's reliability impacts. Lack of fuel was the largest overall cause of generation unavailability.

According to the report, one of the easiest methods for increasing energy availability is through the addition of wind generation. Added generation brings additional transmission opportunities, which also bolsters the construction industry in the state.

The North Dakota Transmission Authority reported it will continue to engage potential transmission owners, encourage the Midcontinent Independent System Operator and Southwest Power Pool to identify lines needed to serve additional generation, and continue to be a voice for reliable and resilient solutions as the grid evolves.

### **CARBON DIOXIDE STORAGE FACILITY TRUST FUND REPORT**

The committee received a report from the Industrial Commission regarding the status of the carbon dioxide facility trust fund pursuant to Section 38-22-15. The purpose of the fund is to pay the expenses associated with the long-term monitoring and management of underground carbon dioxide storage projects. As of October 11, 2022, the carbon dioxide facility trust fund has a zero balance. The fee established by the Industrial Commission is seven cents per ton of carbon dioxide injected underground for storage. According to the report, projects to store carbon dioxide underground include:

- Red Trail Energy's ethanol-manufacturing facility first injection in June 2022.
- Cedar Hills South Unit's first injection in February 2022.
- Tundra's expected first injection in 2026.
- Dakota Gasification Company's first injection in 2023.

### **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, through 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, the High-Level Radioactive Waste Advisory Council held two meetings since the council's last report. The two meetings featured speakers from the Nuclear Regulatory Commission, the Department of Energy, and the Environmental Protection Agency. The featured speakers provided information related to the federal government's role in permitting the disposal of radioactive waste and the status of high-level radioactive waste disposal in the United States. The Yucca Mountain disposal site was projected to be active for 120 years, consisting of 20 years of site characterization; 15 years of approvals, licensing, and construction; and 40 years of operation followed by 45 years of closure and monitoring. Yucca Mountain remains the only potential high-level radioactive waste disposal site under federal law.

The federal government has four priorities related to its nuclear energy mission:

1. Enable continued operation of existing United States nuclear reactors;
2. Enable deployment of advanced nuclear reactors;
3. Responsibly manage the nation's spent nuclear fuel;
4. Maintain United States leadership in nuclear energy technology.

According to the report, the Department of Energy is responsible for locating sites to store and dispose of spent nuclear fuel and focuses on consent-based siting. While spent nuclear fuel is being stored safely at or near nuclear power plant sites, nearby communities never agreed to host the materials on a long-term basis. Given the Department of Energy's recent difficulties in finding a deep-well test site and with permanent waste disposal at Yucca Mountain on hold, the department has begun to educate communities regarding the disposal of nuclear fuel. Before discussion may commence regarding a community hosting an interim site, the Department of Energy must carefully explain what spent nuclear fuel rods are, what is involved with the transportation of those spent fuel rods to an interim site, and what an interim waste site might look like.

## **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 pursuant to Section 54-17.7-13. As of May 2021, 75 percent of the oil produced in North Dakota is exported out of the state by pipeline, while 2 percent is exported to Canada by truck or rail. Ninety-three percent of gas is captured and sold, while 2 percent of gas is flared from zero sales wells because of the lack of pipeline infrastructure. The remaining 5 percent of gas is flared from wells with at least 1,000 cubic feet sold due to challenges with existing infrastructure.

The North Bakken Expansion Project would provide 250 million cubic feet of natural gas transportation capacity per day. In addition, the project would provide approximately 60 miles of new pipeline construction and 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 during the 2021-22 interim, cost an amount exceeding \$260 million, be designed using 24-inch and 12-inch diameter pipelines, and provide residue gas service from north of Lake Sakakawea to the Northern Border Pipeline in McKenzie County.

## **COAL CONVERSION FACILITY CARBON DIOXIDE EMISSIONS CAPTURE REPORT**

The committee did not receive a report, pursuant to Section 57-60-02.1, from a coal conversion facility that received a tax credit for achieving a 20 percent capture of carbon dioxide emissions because no facilities received the credit during the reporting period.

## **CLEAN SUSTAINABLE ENERGY AUTHORITY REPORT**

The committee received a report from the Clean Sustainable Energy Authority regarding the authority's activities and the program's financial impact on state revenues and the state's economy pursuant to Section 54-63.1-04. According to the report, the purpose of the Clean Sustainable Energy Authority is to enhance the production of clean sustainable energy, to make North Dakota a world leader in the production of clean sustainable energy, and to diversify and grow the state's economy. The Clean Sustainable Energy Authority's three grant rounds since 2021 totaled awards of \$250 million in loans, \$20 million in hydrogen grants from federal funds, and \$24.3 million in state grants for 11 projects. The 11 projects include natural gas flaring projects, synfuels production, carbon dioxide sequestration, hydrogen



production, manufacturing biodegradable polymers using methane as a feedstock, and a project to evaluate the potential of using geothermal power generation on oil and gas production sites. No additional grant rounds will be held until additional funding has been appropriated by the Legislative Assembly.

## **ENERGY AND ENVIRONMENTAL RESEARCH CENTER UNDERGROUND ENERGY STORAGE REPORT**

The committee received a report from the EERC regarding the results and recommendations of the underground energy storage study pursuant to Section 14 of Senate Bill No. 2014 (2021). According to the report, gas storage is a proven technology that began in 1915. Typically, gas storage is used to supplement energy demands associated with seasonal heating needs. There are over 300 active gas storage locations in the United States.

The Dunham, Pine, and Opeche salt beds were identified as candidates for salt cavern development and product storage. The preliminary simulation results suggested the development of small caverns is achievable in North Dakota salt beds and the use of multiple caverns was found to be a viable design approach and geomechanically stable.

The report indicated preliminary results are encouraging. Cored intervals appear to have high halite concentrations which is beneficial for the development and stability of engineered salt caverns. Overlying formations are tight and have a thickness that will promote cavern roof stability. While significant halite is present in the Pine salt interval, other impurities exist such as thenardite, which is the most prevalent impurity. Thenardite is soluble in water, which is encouraging for cavern development. The Energy and Environmental Research Center will investigate development opportunities in the Pine salt bed to determine if thenardite persists or if halite becomes predominant.

## **ENERGY AND ENVIRONMENTAL RESEARCH CENTER HYDROGEN REPORT**

The committee received a report from the EERC regarding the study on development and implementation of hydrogen energy in the state pursuant to Section 15 of Senate Bill No. 2014 (2021). According to the report, hydrogen provides a tool for decarbonization, is an energy carrier without carbon or other greenhouse gas emissions, and causes minimal human health issues. The geologic storage of hydrogen requires unique properties and formations in North Dakota are being studied for viability.

According to the report, a hydrogen economy is likely to evolve incrementally and near-term applications that are possible today include:

- Ammonia production with low carbon hydrogen to decarbonize the agricultural industry.
- Hydrogen blending into existing natural gas pipelines to decarbonize natural gas use.
- Supplying decarbonized hydrogen to existing demand at petroleum and renewable oil refineries.

Inclusion of hydrogen in the gas stream can reduce the carbon intensity of the natural gas. A 20 percent hydrogen blend equates to a 7 percent reduction in carbon emissions. Refinery demand for hydrogen has increased as demand for diesel fuel has risen and as sulfur content regulations have become more stringent. Supplying lower carbon intensity hydrogen to the refineries and generating lower carbon intensity hydrogen will result in lower carbon intensity diesel. Every major manufacturer is marketing hydrogen ready gas turbines; most accept blends up to 50 percent hydrogen but some models claim to accept 100 percent hydrogen.

## **DEPARTMENT OF ENVIRONMENTAL QUALITY REPORT**

The committee received a report, pursuant to Section 7 of Senate Bill No. 2024 (2021), from the Department of Environmental Quality regarding carbon reduction initiatives, rules, or policies that will affect North Dakota residents and industries. According to the report, in 2021, Governor Doug Burgum expressed a goal that North Dakota be carbon neutral by 2030 because of the state's unique geology coupled with the development of new innovative technologies. Carbon neutrality is a state of net zero carbon dioxide emissions, which can be achieved by balancing carbon dioxide emissions with carbon dioxide capture or by eliminating emissions entirely. North Dakota's total emissions in 2018 were 54.97 million metric tons of carbon dioxide equivalent from fossil fuel combustion.

According to the report:

- 79 percent of United States greenhouse gas emissions in 2020 was carbon dioxide.
- 27 percent of United States greenhouse gas emissions came from the transportation sector, 25 percent came from the electricity sector, and 11 percent came from the agriculture sector.

- Between 1990 and 2020, total United States greenhouse gas emissions decreased by 7.3 percent, carbon dioxide emissions decreased by 7.9 percent, and carbon dioxide emissions from fossil fuel combustion decreased by 8.2 percent.
- Between 2019 and 2020, total United States greenhouse gas emissions decreased by 9.0 percent, carbon dioxide emissions decreased by 10.3 percent, and carbon dioxide emissions from fossil fuel combustion decreased by 10.5 percent.
- In 2018, of the 54.97 million metric tons of carbon dioxide equivalent from fossil fuel combustion in North Dakota, 31.16 million metric tons came from the electric power sector, 12.05 million metric tons came from the industrial sector, and 9.41 million metric tons came from the transportation sector.
- Between 2015 and 2018, total North Dakota greenhouse gas emissions increased by 0.37 percent.
- Between 1990 and 2018, total North Dakota greenhouse gas emissions increased by 34 percent. Commercial emissions increased by 39 percent, residential emissions by 5 percent, and transportation emissions by 103 percent.

## **INSURANCE COMMISSIONER'S LIGNITE COAL REPORT**

The committee received a report, pursuant to Senate Bill No. 2287 (2021), from the Insurance Commissioner regarding the availability, cost, and risks associated with insurance coverage in the lignite coal industry. According to the report, North Dakota's lignite industry plays a critical role in the state's economy, generating \$3 billion in annual economic activity and over \$100 million in annual tax revenue. In combination with oil and gas extraction, the lignite industry generates nearly 24 percent of the gross domestic product in the state. North Dakota is one of the country's top 10 coal-producing states, mining approximately 30 million tons every year since 1988. In 2018, North Dakota overtook Texas as the leading producer of lignite coal. According to the report, the state supports 4,000 megawatts of lignite and other coal generation at seven locations and provides affordable, reliable electric power to over 2 million customers in North Dakota, South Dakota, Minnesota, Montana, and Iowa. According to the United States Energy Information Administration, North Dakota has some of the lowest-cost electricity for residential use, ranking 46<sup>th</sup> out of 51 states, which includes the District of Columbia. The lignite coal sector also is a major employer in North Dakota and counties with lignite production activity have some of the highest wages in the state. Coal mining supported 3,500 jobs in 2017, and according to one study was responsible for as many as 14,000 jobs due to indirect and induced economic activity.

According to the report, Lignite Energy Council member companies experienced premium increases ranging from 10 to 300 percent from 2017 through 2020. Since 2018, obtaining adequate, affordable insurance coverage has proven challenging for companies in the lignite coal sector. Of the Lignite Energy Council member companies surveyed, 80 percent reported decreasing limits in their most recent policies. The situation has been driven primarily by external market forces, which have been exacerbated by the reduction of insurance underwriting capacity from the coal sector due to net-zero carbon emissions efforts and related environmental movements. The need for reliable, affordable energy production, especially unencumbered by geopolitical risk, has been highlighted in recent years.

The report indicated Lignite Energy Council members and stakeholders should consider alternatives to the commercial insurance market given the importance of the lignite sector to North Dakota's energy consumers, labor market, and overall economy. The report recommended conducting a study to assess the feasibility of forming one or more captive insurance companies for members of the lignite coal sector. The feasibility study should include an analysis of the business, regulatory, risk, and financial and tax requirements and implications of captive insurance companies.

# GOVERNMENT ADMINISTRATION COMMITTEE

The Government Administration Committee was assigned the following studies:

- Section 24 of House Bill No. 1003 (2021) directed a study regarding the feasibility and desirability of consolidating attorney and legal-related positions in state government. The study was to include an analysis of the number of attorney and legal-related positions in state government, the agency to which the positions were assigned, the type of work performed by the positions, and any efficiencies that may be gained through the consolidation of these positions into the Attorney General's office. The study also was to include consultation with the Attorney General and any agency with attorney and legal-related positions in state government for the 2021-23 biennium.
- Section 43 of House Bill No. 1015 (2021) directed a study regarding space needs of the executive, judicial, legislative branches, and the Ethics Commission. The study was to include a review of each branch's employee work location policies; an assessment of the space needs of each branch to fulfill their constitutional and statutory responsibilities; an evaluation of state agency leases of space from private and other governmental entities in Bismarck, amounts being paid for these leases, and state agency rental payments being made to the Office of Management and Budget (OMB) from special and federal funds; consideration of the feasibility and desirability of OMB charging rent to agencies receiving funding from the general fund; and the development of a space utilization plan for the Capitol complex. The study also was to include consideration of whether adequately sized committee rooms, appropriate accommodations under the federal Americans with Disabilities Act of 1990 (ADA), and flexible meeting areas are available.
- Section 3 of Senate Bill No. 2023 (2021) directed a study regarding funding sources for the budget of the Racing Commission. The study was to include consideration of the feasibility and desirability of changing the Racing Commission to a special funds only budget and the effect on general fund revenues.
- House Concurrent Resolution No. 3043 (2021) directed a study regarding the amount, type, cost, and occupancy of property leased by the state or any state agency since January 1, 2018. The study was to include a determination of the individuals who own the property leased by the state or a state agency, including the members of a corporation, partnership, or any other type of entity that owns property leased by the state or a state agency, whether any statewide elected or appointed official should be restricted from owning any property leased by the state or state agency under the direction of the state agency, and whether a legislator should be prohibited from voting on appropriation bills for agencies that lease property from the legislator.

The Legislative Management also assigned the committee the responsibility to:

- Receive a report from 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 North Dakota Century Code 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.
- Receive a report from the Adjutant General regarding any land purchased for the expansion of Camp Grafton pursuant to Section 16 of House Bill No. 1016 (2021).

Committee members were Senators Randy Burckhard (Chairman), Jerry Klein, Scott Meyer, and Tracy Potter and Representatives Rick Becker, Glenn Bosch, Jared C. Hagert, Karla Rose Hanson, Pat D. Heinert, Karen Karls, Lawrence R. Klemin, Ben Koppelman, Todd Porter, Shannon Roers Jones, and Dan Ruby. Senator Erin Oban was a member until she resigned from the Legislative Assembly on March 27, 2022. Representative Jim Kasper was a member until he was reassigned to the Health Care Committee on November 1, 2021.

## STUDY OF ATTORNEY AND LEGAL-RELATED POSITIONS IN STATE GOVERNMENT

### Background

The committee studied the feasibility and desirability of consolidating attorney and legal-related positions in state government. The study was to include an analysis of the number of attorney and legal-related positions in state government, the agency to which the positions are assigned, the type of work performed by the positions, and any efficiencies that may be gained through the consolidation of these positions into the Attorney General's office. The committee was to consult with the Attorney General and any agency with attorney and legal-related positions in state government for the 2021-23 biennium.

Section 54-12-01(6) requires the Attorney General to consult with and advise the Governor and all other state officers and when requested give written opinions on all legal or constitutional questions related to the duties of such officers respectively.

Section 54-12-08(1) provides that after consultation with a state agency head or with the agency affected, the Attorney General may appoint an assistant attorney general (AAG) or special assistant attorney general (SAAG) to represent the agency. A state agency head or state agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state agency is interested or is a party, except upon written appointment by the Attorney General. Workforce Safety and Insurance, the Department of Transportation, the Tax Commissioner, the Public Service Commission, the Insurance Commissioner, the Agriculture Commissioner, and the Securities Commissioner may employ attorneys to represent them. These entities are required to pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations. The attorneys that represent these entities must be SAAGs appointed by the Attorney General pursuant to this section. Absent good cause, the Attorney General is required to appoint as SAAGs licensed attorneys selected by these entities. The Attorney General may revoke the appointment only for good cause or upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards.

### **Consolidation of Attorney and Legal-Related Positions**

Representatives of the Attorney General's office reported the office employs 42 attorneys, 6 paralegals, and 6 legal assistants. They reported the Attorney General is responsible for the legal representation of the state and its component entities and an attorney is not allowed to represent the state or a state entity unless the attorney is an AAG or an SAAG. An assistant attorney general is an attorney employed by the Attorney General's office and a SAAG is an attorney employed by a private or public entity other than the Attorney General's office but who is granted the SAAG designation by the Attorney General. The committee was informed the Attorney General believes it is important not to expand the number of state entities that hire SAAGs outside the Attorney General's office to:

- Uphold the Attorney General's constitutional responsibility to fulfill the duties of his office and provide legal representation for the state and state entities;
- Provide for better accountability and oversight of state attorneys by the Attorney General;
- Provide consistent legal advice and interpretations across state government;
- Avoid the unintentional presentation of conflicting legal positions by the state in litigation, administrative hearings, public meetings, and other venues;
- Prevent wasteful duplication of efforts across multiple state entities;
- Reduce costs;
- Foster and facilitate collaboration among attorneys representing state entities to improve legal insights and work products;
- Maintain attorneys' independence to provide advice based on appropriate legal analyses;
- Provide an opportunity for specialization among groups or divisions of attorneys in the Attorney General's office who can advise multiple state entities; and
- Ensure seamless transitions of legal matters between general counsels and litigators.

The committee was informed the Governor's office, OMB, Tax Commissioner, Department of Human Services, Insurance Commissioner, Public Service Commission, Securities Department, Workforce Safety and Insurance, Department of Corrections and Rehabilitation, Adjutant General, Department of Commerce, Agriculture Commissioner, and Department of Transportation employ SAAGs. Representatives of the Attorney General's office reported the Attorney General is not requesting certain agencies' attorneys be transferred to the Attorney General's office.

### **Conclusion**

The committee makes no recommendation regarding the study of attorney and legal-related positions in state government.

## **STUDIES OF SPACE NEEDS AND PROPERTY LEASED BY THE STATE**

### **Study of Space Needs**

The committee studied space needs of the executive, judicial, legislative branches, and the Ethics Commission. The study was to include:

- A review of each branch's and the Ethics Commission's employee work location policies;

- An assessment of the space needs of each branch and the Ethics Commission to fulfill their constitutional and statutory responsibilities;
- An evaluation of state agency leases of space from private and other governmental entities in Bismarck, amounts being paid for these leases, and state agency rental payments being made to OMB from special and federal funds;
- Consideration of the feasibility and desirability of OMB charging rent to agencies receiving funding from the general fund; and
- The development of a space utilization plan for the Capitol complex.

The study also included consideration of whether adequately sized committee rooms, appropriate accommodations under the ADA, and flexible meeting areas are available.

The Budget Section, at its June 28, 2022, meeting, asked the committee to include building lease agreements entered into by the Attorney General's office as part of the study of state agency space needs.

### **Study of Property Leased by the State**

The committee studied the amount, type, cost, and percent occupancy of property leased by the state or any state agency since January 1, 2018. The study was to include a determination of the individuals who own the property leased by the state or a state agency, including members of a corporation, partnership, or any other type of entity that owns property leased by the state or a state agency, whether any statewide elected or appointed official should be restricted from owning any property leased by the state or state agency under the direction of the state agency, and whether a legislator should be prohibited from voting on appropriation bills for agencies that lease property from the legislator.

### **Background**

#### **Capitol Grounds and Facilities History**

The original Capitol, constructed in 1884, was destroyed by a fire in December 1930. The current Capitol was completed in 1934 and includes the 294-foot long legislative wing. In 1981, construction on the judicial wing of the Capitol was completed. The judicial wing is 300 feet long and contains 168,400 square feet. The Capitol grounds include 132 acres. The Facility Management Division of OMB is responsible for the overall daily operations and preservation of the State Capitol complex and surrounding 132-acre grounds. In addition, the division is responsible for providing space management services for most state agencies. All new construction, historical preservation and restoration, and extraordinary repairs are prioritized and forecasted for a 10-year period. Other major buildings on the Capitol grounds are:

- Liberty Memorial Building - In 1924, construction of the Liberty Memorial Building was completed. The building houses the State Library, is the oldest facility on the Capitol grounds, and underwent a complete renovation in 1982.
- State Office Building - In 1951, the Legislative Assembly approved House Bill No. 605 to authorize the Board of Administration to sell the south 15 acres on the west side of US Highway 83 of the Capitol grounds to the Board of Education for the construction of a new building to house Bismarck Junior College. In 1955, construction of the State Office Building was completed. Bismarck Junior College quickly outgrew the building and in 1959, the Legislative Assembly authorized the purchase of the building.
- Governor's residence - In 1960, a new Governor's residence was constructed on the Capitol grounds to replace the original Governor's residence located on Fourth Street. The second Governor's residence was demolished in 2018 after the construction of a third Governor's residence, located on the Capitol grounds just north of the second Governor's residence location.
- Department of Transportation (DOT) building - In 1968, the DOT building was completed, which primarily houses DOT and contains 125,000 square feet.
- Heritage Center - In 1981, the State Historical Society moved into a newly constructed Heritage Center, which contained 130,000 square feet. In 2014, construction of a 97,000-square-foot expansion was completed.

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

Section 54-21-18 provides the Director of OMB must control, manage, and maintain the State Office Building. The building must be considered a part of the Capitol relating to the custody, maintenance, and control of the Capitol and grounds. Except as otherwise provided by law, the Director of OMB has charge and control of the 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.

### **Capitol Grounds Planning Commission**

Section 48-10-01 establishes the Capitol Grounds Planning Commission, which consists of the Lieutenant Governor as the Chairman and eight members selected biennially as follows:

- The Governor must appoint two citizens, one licensed architect, and one representative from the State Historical Society;
- The President of the Senate must appoint two senators; and
- The Speaker of the House of Representatives must appoint two representatives.

Section 48-10-02 requires the Capitol Grounds Planning Commission to administer the Capitol building fund and provides all money, properties, and income from the fund, unless otherwise appropriated, are dedicated and reserved for the exclusive purpose of the construction of an addition to the legislative wing. The Capitol Grounds Planning Commission is to take steps to accumulate and conserve the money and property in the Capitol building fund for such purpose. The Capitol building fund was established at the time of statehood by the Enabling Act of 1889. Section 12 of the Enabling Act provided 50 sections of land to North Dakota upon statehood to be used for the purpose of financing construction of public buildings for legislative, executive, and judicial use. The Capitol building fund is made up of the land, proceeds from the sale of the land, and any investment income from the proceeds. Section 12 of the Enabling Act was amended by Congress in 1957 to expand the fund's use for construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvements of public buildings at the Capitol.

Section 48-10-03 provides the commission develop and modify long-term plans for the development of the Capitol grounds and requires the commission to approve the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the Capitol grounds. The commission is allowed to accept gifts for exterior placement on the Capitol grounds or for the improvement of the exterior construction of any building on the Capitol grounds, including landscaping and improvements to the Capitol grounds. The section provides the commission a continuing appropriation for any gifts of money accepted, which must be deposited in the Capitol building fund. If the Legislative Assembly authorizes the construction or placement of an item on the Capitol grounds, the commission must approve the site, basic style, and exterior construction of the item within a reasonable period of time.

The commission is 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. The commission must consider major interior changes being proposed for the buildings or facilities on the Capitol grounds. The commission 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 2021 Legislative Assembly appropriated \$2.9 million from the Capitol building fund, including \$518,000 for a building automation project, \$500,000 for extraordinary repairs, \$350,000 for a building consolidation study, \$300,000 for special assessments, \$500,000 for interior and exterior signs, \$750,000 for accessibility improvements, and \$25,000 for accessibility compliance consulting services. The Legislative Assembly estimated the 2021-23 biennium ending balance in the fund will be \$1.8 million.

### **Other Facilities Owned by State Agencies in the Bismarck-Mandan Area**

Several state-owned facilities are located in the Bismarck-Mandan area. Examples of agencies owning facilities in the area include Workforce Safety and Insurance, the Department of Corrections and Rehabilitation, the Bank of North Dakota, the Department of Trust Lands, and the Game and Fish Department. Some agencies, such as Workforce Safety and Insurance, lease a portion of their facilities to other state agencies.

### **Americans with Disabilities Act**

The Americans with Disabilities Act of 1990 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 committee received testimony from a representative of OMB regarding accessibility of the State Capitol grounds. 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 accessible bathrooms, added signage, meeting room door replacements, replacing stairs with ramps on the

ground floor, and a renovation to the entrance of the Brynhild Haugland Room. The committee was informed OMB hired J2 Studio Architecture + Design, PC, to assess accessibility of the State Capitol and compliance with the ADA.

### **Agency Space Needs and Utilization**

The committee received testimony from representatives of OMB regarding work location policies, the authority of OMB to determine executive branch space needs, and the authority of OMB to negotiate leases entered by state agencies. The testimony indicated:

- There is no statewide work location policy for state employees;
- Each agency determines the most appropriate work location policy based on the needs of the agency;
- State agencies supply necessary equipment and materials for employees, but commuting expenses, Internet, utilities, rent, and various supplies typically are not reimbursed by the state to the employees;
- Section 54-21-28 provides for OMB to conduct a periodic space utilization study of executive branch staff on the Capitol grounds, develop a space allocation and design policy, and allocate and assign office space, based upon space utilization studies and the established policies, guidelines, standards, and procedures;
- Section 54-21-24.1 provides a lease or rental agreement or renewal of the lease or rental agreement for the lease or rental of buildings or portions of buildings may be entered by the Director of OMB. The department, agency, or board for which the office space is sought must approve the office space before the Director may finalize a contract or lease for the office space;
- OMB does not remove space from an agency unless the agency approves; and
- OMB is considering whether there is a need for OMB to approve facility renovation change orders. The committee was informed OMB reviews the financial aspects of each state lease, but the legal provisions of the lease are reviewed by the Attorney General's office.

The committee received information from state agencies regarding space needs. The committee reviewed the results of a survey conducted to identify all office, meeting, and storage space leased or owned by state agencies. The survey identified the cost per square foot, use, employee headcount, and the individual owners of leased space for each agency location. Leased space cost ranges from \$0 per square foot for certain office and storage space leased by the Attorney General to \$28.48 per square foot for 1,781 square feet of recruitment office space leased by the Adjutant General in West Fargo and \$31.25 per square foot for 96 square feet of office space leased by the Attorney General in Grand Forks. The survey also identified projected space needs for each agency. The Secretary of State, State Auditor, Legislative Assembly, Legislative Council, judicial branch, Highway Patrol, Adjutant General, and State Historical Society identified needs for additional or renovated space.

The committee received additional information from selected state agencies regarding their space needs.

- **Legislative Council:**

The most significant changes in legislative committee rooms over the last 3 decades occurred during the 2021 legislative session due to the need for social distancing resulting from the COVID-19 emergency;

The 2021 changes expanded the legislative presence in the judicial wing of the State Capitol through the construction of four new committee rooms;

Most feedback from legislators and others regarding the newly constructed meeting rooms was positive and many legislators expressed interest in continuing to use the rooms;

The legislative branch retained control over the four new rooms since the conclusion of the 2021 legislative session, but the long-term jurisdiction over the rooms had not been formally resolved until the November 2021 special legislative session, in which the Legislative Assembly approved Senate Bill No. 2349 to transfer the rooms to the legislative branch as recommended by this committee; and

Section 48-08-04 identifies areas of the State Capitol which may not be used without the authorization of the Legislative Council.

- **Judicial branch:**

The judicial branch does not have a specific policy regarding work location;

The court has 27,764 square feet of space on the first and second floors of the judicial wing of the State Capitol and no longer leases office space;

Architects were contracted to determine the feasibility of converting the Liberty Memorial Building into a new Supreme Court building in 2015 and the judicial branch continues to favor that proposal; and

The Liberty Memorial Building would require a 21,000 square foot addition to house the judicial branch.

- Ethics Commission:

The Ethics Commission has entered a 10-year lease for 1,344 square feet of space in north Bismarck for \$19.50 per square foot per year;

The Ethics Commission opposes being located in the State Capitol because it could limit independence of the commission and discourage individuals from contacting the commission with concerns; and

The Ethics Commission is reviewing its need for a physical office location.

- Attorney General:

There was a \$1.8 million cost overrun on a building leased by the office at 1720 Burlington Avenue in Bismarck;

The prior Attorney General was made aware of the cost overrun in January 2021 and the cost overrun primarily was due to requests from the Attorney General's office for renovations, additions, and other changes to the property;

Several items in the contract with the lessor did not comply with state contract requirements, including the monthly lease payments reflected the contractually agreed-to amount plus an additional amount for the cost overrun;

Approximately \$1.4 million of unspent funds from Attorney General's 2019-21 biennium appropriation was used to pay for a portion of the cost overrun and the remaining \$400,000 was added to the monthly lease payments to be paid by the Attorney General over the 10-year lease term;

Employees from the Bureau of Criminal Investigation, Consumer Protection Division, Lottery, Information Technology, Criminal Justice Information Services, and the State Fire Marshal are located in the leased facility;

The Attorney General's office is working with the State Auditor in its review of the lease;

The cost overrun for renovations of the facility at 1720 Burlington Avenue is a state responsibility because it was a build-to-suit project; and

Despite the deletion of the email accounts of the former Attorney General and former Deputy Attorney General, many emails related to the lease have been recovered from individuals outside the Attorney General's office.

- Information Technology Department:

The agency entered a lease of an 85,000 square foot building in north Bismarck in June 2014 with an expiration date of June 2025 at a cost of \$17 per square foot per year;

The agency staff was required to vacate the building from July 2019 through September 2020 due to necessary structural repairs;

The agency's space needs have changed since the COVID-19 emergency and the agency is subleasing 40,000 square feet of the building to the Department of Environmental Quality;

The agency has a telework policy that identifies state and employee responsibilities; and

94 percent of Information Technology Department staff live in North Dakota, with a large majority living in Burleigh and Morton Counties.

Representatives of OMB provided information regarding a proposal for OMB to charge rent to agencies receiving funding from the general fund that are located on the Capitol grounds. The committee was informed:

- Only nongeneral fund agencies on the Capitol grounds pay rent;
- There would be no net cost to implement this proposal, because the Facility Management Division budget would receive funding from special funds derived from rent paid by the general fund agencies instead of directly from the general fund;
- The proposal would provide an incentive for general fund agencies to more efficiently use space on the Capitol grounds;
- Total leased space decreased by 20 percent from 2019 to 2021 and there is potential to reduce total leased space by an additional 20 percent by 2023; and
- State agencies have reduced leased space throughout Bismarck through the use of remote work, resulting in lease savings of over \$1 million annually for the state.



## **Considerations and Recommendation**

The committee considered but did not recommend a bill draft to provide for the disclosure of leased property ownership and to enact prohibitions relating to the lease of property owned by a member of the Legislative Assembly or an elected or appointed official. Members of the committee expressed concerns regarding the enactment of voting limitations and whether any violations of the prohibitions would be investigated by both a legislative committee and the Ethics Commission.

The committee recommended Senate Bill No. 2349 to transfer certain space in the judicial wing of the State Capitol, including judicial wing room 216 and judicial wing rooms 327 B, C, and E, from the State Department of Health and the Department of Human Services to the legislative branch. The bill was introduced to and approved by the 2021 Legislative Assembly during the November 2021 special legislative session.

## **STUDY OF THE RACING COMMISSION BUDGET**

The committee studied funding sources for the budget of the Racing Commission, including consideration of the feasibility and desirability of changing the Racing Commission to a special funds only budget and the effect on general fund revenues.

The 2021 Legislative Assembly appropriated \$574,495, including \$407,894 from the general fund and \$166,601 from other funds, including the Racing Commission's operating fund, to the commission for the 2021-23 biennium.

Section 53-06.2-08 authorizes the Racing Commission to charge a license fee, as established by the Racing Commission, for races commensurate with the size and attendance of the race meet. The Racing Commission may grant licenses to horse owners, jockeys, trainers, veterinarians, concessionaires, service providers, and such other persons as determined by the commission. Section 53-06.2-05(6) requires the Racing Commission to deposit any fees collected under its authority in the Racing Commission operating fund. The Racing Commission may spend the fee revenues for operating costs of the commission pursuant to legislative appropriation. The Racing Commission has established the amounts of various license fees in North Dakota Administrative Code Section 69.5-01-05-02, which provides each application for a license, or its renewal, must be accompanied by the payment of an annual fee. The license fees identified include \$100 plus \$10 per day of racing for an association license to conduct live racing, \$75 for a trainer, \$50 for an individual owner, and \$7,500 for a new service provider. The fee amounts were adjusted last in July 2011. In its submitted budget request for the 2021-23 biennium, the Racing Commission estimated approximately \$132,500 of revenue to be deposited in its operating fund for the biennium.

Chapter 53-06.2 establishes the breeders' fund, the purse fund, and the racing promotion fund and provides for the Racing Commission to administer the funds. The breeders' fund was established to financially reward breeders or owners of North Dakota-bred horses. The purse fund was established to supplement and improve purses offered at racetracks within the state. The racing promotion fund was established to assist in improving and upgrading racetracks in the state, promoting horse racing in the state, and developing new racetracks in the state. Pursuant to Section 53-06.2-11, the breeders' fund, purse fund, and racing promotion fund receive revenue from wagers on live horse racing and simulcast and account wagering. In addition to the three special funds, a portion of revenue from wagers on live horse racing and simulcast and account wagering is placed in the general fund.

The committee was informed the Racing Commission is comprised of two full-time staff, an executive director and an administrative officer, and two temporary staff, a breeders' fund administrator and a safety steward and investigator. The Racing Commission reported horse racing-related tax collections deposited in the general fund have exceeded the general fund appropriation to the Racing Commission each biennium since the 2013-15 biennium. Representatives of the Racing Commission reported the commission is neutral regarding the source of funds for its budget.

## **Conclusion**

The committee makes no recommendation regarding the study of the Racing Commission budget.

## **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; or
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 2021-22 interim.

The committee received a report from OMB in August 2022 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 2021-23 biennium, 11 agencies expect a decrease in federal funds of 5 percent or more in the 2023-25 biennium. The committee was informed the Highway Patrol, Secretary of State, and State Library may seek additional state funding if the federal funding level is not maintained.

### **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 2021-22 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 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 2021-22 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the State of South Dakota.

### **CAMP GRAFTON EXPANSION**

Section 16 of House Bill No. 1016 (2021) required for the Adjutant General to report to the Legislative Management regarding any land purchased for the expansion of Camp Grafton. The 2019 Legislative Assembly, in Senate Bill No. 2016, appropriated \$600,000 from the strategic investment and improvements fund to the Adjutant General for the Camp Grafton expansion. The expansion is to provide space for the National Guard to expand its shooting range at Camp Grafton. The 2019 Legislative Assembly provided legislative intent that:

- The Adjutant General purchase options for the purchase or long-term lease of land for the Camp Grafton expansion, including the purchase of no more than 1,600 acres and the long-term lease of the remainder, not to exceed 6,000 acres in total.
- If the Adjutant General secures options to purchase or lease all necessary land for the Camp Grafton expansion, the 2021 Legislative Assembly provide funding and authority for the purchase or long-term lease of land for the Camp Grafton expansion.
- The Adjutant General not use eminent domain for the expansion of Camp Grafton.

The Adjutant General reported to the 2021 Legislative Assembly it had spent \$28,300 for appraisals to move forward with negotiations for purchase and lease agreements.

The 2021 Legislative Assembly, in House Bill No. 1016, provided authority for the Adjutant General to continue the unexpended appropriation authority from the \$600,000 appropriation from the strategic investment and improvements fund to continue the expansion of Camp Grafton. In addition, the 2021 Legislative Assembly appropriated \$280,000 of ongoing funding from the general fund to lease land and \$1.75 million of one-time funding from the general fund to purchase land for the Camp Grafton expansion. The 2021 Legislative Assembly provided legislative intent that:

- The Adjutant General contract for the purchase or long-term lease of land for the Camp Grafton expansion, including the purchase of no more than 1,600 acres and the long-term lease of the remainder, not to exceed 6,000 acres in total.

- The Adjutant General not use eminent domain for the expansion of Camp Grafton.

The Adjutant General reported in August 2022 that of the \$2.63 million appropriated for the range expansion, \$48,900 has been spent for land appraisals and the expansion has been paused to re-evaluate space needs for new ammunition.

# GOVERNMENT FINANCE COMMITTEE

The Government Finance Committee was assigned the following responsibilities for the 2021-22 interim:

- Section 44 of House Bill No. 1015 (2021) directed a study of the classified state employee compensation system.
- Section 1 of House Bill No. 1031 (2021) directed a study of state agency fees.
- Section 4 of House Bill No. 1494 (2021) directed a study of law enforcement and correctional officer recruitment and retention.
- Section 13 of Senate Bill No. 2021 (2021) directed a study of information technology budgeting.
- A study of state revenues and state revenue forecasts, pursuant to Legislative Management directive.
- A study of the Emergency Commission and Budget Section approval process, pursuant to Legislative Management directive.
- A study of the cash management of state funds, pursuant to Legislative Management directive.
- A review and monitoring of the state budget, pursuant to Legislative Management directive.
- The Legislative Management delegated to the committee the responsibility to receive the following reports:

Reports from the Office of Management and Budget (OMB) regarding executive branch employees who received a cumulative salary increase of 15 percent or more since March 31, 2021, (North Dakota Century Code Section 54-44-04).

Reports from the Department of Commerce regarding the status of the unmanned aircraft systems test site program and the beyond visual line of sight unmanned aircraft system program (Sections 54-60-28 and 54-60-29.1).

A report from the Bank of North Dakota regarding the status of infrastructure funds, including the infrastructure revolving loan fund, legacy infrastructure loan fund, and water infrastructure revolving loan fund (Senate Bill No. 2014 (2021) § 36).

A report from the Department of Commerce regarding the results and recommendations of the department's study of environmental, social, and governance policies (Senate Bill No. 2291 (2021) § 2).

Committee members were Representatives Michael Howe (Chairman), Pamela Anderson, Jeff Delzer, Jared C. Hagert, Gary Kreidt, Lisa Meier, Corey Mock, Dave Nehring, Gary Paur, Mike Schatz, Jim Schmidt, Steve Vetter, and Don Vigesaa and Senators Brad Bekkedahl, Richard Marcellais, and Ronald Sorvaag.

## CLASSIFIED STATE EMPLOYEE COMPENSATION SYSTEM STUDY

### Overview

The committees studied the classified state employee compensation system during the 2021-22 interim. The study was required to include a review of the development and determination of pay grades and classifications.

The Human Resource Management Services (HRMS) Division of OMB is responsible for establishing a unified system for state employee job classifications pursuant to North Dakota Century Code Chapter 54-44.3. North Dakota Administrative Code Article 4-07 contains the rules relating to the classified state employee compensation system. The policies, rules, and procedures developed by HRMS address the classification and compensation plans, salary administration, personnel administration actions, and compliance with federal laws for merit personnel systems. In addition, the federal government requires certain state agencies and units of local government to operate under a merit system of personnel administration because of the federal funds they receive for the programs they administer.

### Committee Considerations

The committee received information on previous studies of the state employee compensation system, including studies in the 1997-98, 2005-06, and 2009-10 interims. During the 2009-10 interim, the Government Services Committee contracted with the Hay Group for \$100,000 to evaluate the state employee compensation system. The Hay Group recommended simplifying the classification system, decreasing the salary ranges in each classification, including performance and equity components in salary adjustments, and developing a compensation philosophy statement. Based on the recommendations, the Government Services Committee contracted with the Hay Group for \$198,000 to implement the changes to the classified employee compensation system during the 2009-11 biennium and recommended House Bill No. 1031 (2011) to codify a compensation philosophy statement.

The Office of Management and Budget provided information on changes to the classified state employee compensation system, including changes to the classifications. The changes to the system were not presented to the 2021 Legislative Assembly but were approved by the State Personnel Board. As a part of the changes, OMB combined the classifications to reduce the system from 850 classifications across 22 pay levels to 100 standardized roles within 16 job families across 10 pay levels. New salary ranges were established to provide more flexibility to state agencies for setting starting pay levels, but salary equity funding may be requested if state employees are below the mid-points in the new salary ranges.

The committee received information from OMB regarding the results of a state employee benefits survey. The top response for the most valued compensation reward was fully paid health insurance while the top response for most desired change was more competitive pay.

Job Service North Dakota provided information on the labor market in North Dakota and comparisons to other states. In March 2022, North Dakota's unemployment rate was 3.3 percent, and there were 17,806 job openings. Based on 2021 salary and wage data, the average annual wage in North Dakota was \$53,380 compared to \$60,480 in Minnesota and \$46,810 in South Dakota.

The committee received information from the Department of Human Services, Information Technology Department (ITD), Department of Corrections and Rehabilitation (DOCR), and Retirement and Investment Office regarding recent classification and reclassification requests since the implementation of the changes to the classification system in July 2020. The Department of Human Services had 204 classifications and reclassifications for the 18-month period following the classification system changes compared to 130 for the 18-month period before the classification system changes while ITD had 68 classifications and reclassifications for the 18-month period following the classification system changes compared to 23 for the 18-month period before the changes. In 2021, DOCR had a turnover rate of 30 percent, and the primary reason correctional officers leave is related to a higher salary with another employer. Based on comments from the state agencies, the classification system changes provide more flexibility with pay ranges but do not address compensation issues. Employee feedback indicated the compensation ratios are less relevant with the broader pay ranges.

### **Recommendation**

The committee makes no recommendation regarding the study of the classified state employee compensation system.

## **STATE AGENCY FEES STUDY**

### **Overview**

House Bill No. 1031 (2021) required the Legislative Management to assign one or more interim committees the responsibility to study state agency fees. As codified in Century Code Section 54-35-27, state agencies with 40 or fewer fees are required to submit a report to OMB by July 1, 2022, regarding details on each of the fees. By September 2022, OMB is required to compile the agency fee reports and submit a comprehensive report to the Legislative Management. State agencies with 40 or more fees are required to submit a report to the Legislative Management by July 1, 2024, regarding details on each of the fees. The report from each state agency must provide an analysis of each fee, including a comparison of the revenue generated by the fee, costs associated with the fee, and the appropriateness of the fee. After submission of the initial reports, all state agencies are required to submit updates to the Legislative Management by July 1<sup>st</sup> of every even-numbered year regarding any new fees, changes to existing fees, or the removal of any fees.

### **Committee Considerations**

In response to a motion approved by the committee, OMB developed an agency fee reporting template to identify the constitutional or statutory reference for the fee, the date the fee was established, the current amount of the fee, the reason the fee is set at the specific dollar amount, the fund in which the fee is deposited, the total revenue collected from the fee in the most recently completed biennium, any restrictions on the expenditure of the fee revenue, the significance of the expenditure of the fee revenue for the agency's budget, a comparison of the fee revenue to the cost incurred to provide the services associated with the fee, the date the fee was last changed, and comments from the agency on the appropriateness and affordability of the fee.

The Office of Management and Budget presented a report on state agencies with 40 fees or fewer pursuant to Section 54-35-27. In the report, 46 state agencies had 40 or fewer fees, including 15 state agencies with no fees and 31 state agencies with at least 1 fee but no more than 40 fees. Due to the timing of the report, the committee deferred the review of the fees until the next interim.

### **Recommendation**

The committee makes no recommendation regarding the study of state agency fees.

## **LAW ENFORCEMENT AND CORRECTIONAL OFFICER RECRUITMENT AND RETENTION STUDY**

### **Overview**

House Bill No. 1494 (2021) provided for a Legislative Management study of the recruitment, retention, turnover, and training of law enforcement and correctional officers employed by state agencies and political subdivisions. The study may include a review of current and historical rates of retention and turnover, the training and professional development offered and required of law enforcement and correctional officers, and an analysis of the compensation and benefits of law enforcement and correctional officers employed by state agencies, political subdivisions, and comparable positions in other states within the region.

The state employee recruitment and retention bonus program is codified in Section 54-06-31 and allows state agencies to provide bonuses to recruit and retain employees in hard-to-fill occupations. Any bonuses provided by a state agency must be within the appropriation limits of the agency's salaries and wages budget. A state agency must have a written policy identifying the eligible positions and the provisions for awarding bonuses. The Human Resource Management Services division of OMB is required to provide periodic reports to the Legislative Management regarding recruitment and retention bonuses.

Section 39-03-13.1 provides the Superintendent of the Highway Patrol is responsible for operating a law enforcement training center to provide basic and advanced peace officer training. The training programs offered must meet the certification criteria and curriculum standards established by the Peace Officer Standards and Training Board.

### **Committee Considerations**

The Department of Corrections and Rehabilitation, Highway Patrol, and Attorney General's office provided information regarding the recruitment, retention, turnover, and training of correctional officers and law enforcement officers. The Department of Corrections and Rehabilitation observed an improvement in recruitment and retention of correctional officers by emphasizing the department's mission but continues to face challenges with pay rates that are less than the rates offered to correctional officers in Burleigh and Cass Counties. The Highway Patrol provides a \$2,500 sign-on bonus upon completion of probation and a \$1,000 recruitment bonus to current employees for recruiting a trooper who successfully completes probation. The Highway Patrol also transitioned from five 8-hour shifts to four 10-hour shifts per week to allow troopers to have additional days away from work. The Attorney General's office has challenges retaining agents in the northwestern area of the state because Williams County and Williston offer higher starting salaries for law enforcement positions.

The committee received information from the North Dakota Sheriff's Association and the Mandan Police Department regarding the recruitment and retention of county and city law enforcement officers. Over 80 percent of local law enforcement in North Dakota has less than 10 years of experience based on a survey of county and city law enforcement agencies. Suggestions to address local law enforcement staffing challenges include income tax exemptions, recruitment and retention bonuses, and scholarships. Some police departments have a high turnover rate because officers accept county or state law enforcement positions, which offer higher starting pay.

### **Recommendation**

The committee makes no recommendation regarding the study of law enforcement and correctional officer recruitment and retention.

## **INFORMATION TECHNOLOGY BUDGETING STUDY**

### **Overview**

Section 13 of Senate Bill No. 2021 (2021) provided for a study of the state government information technology (IT) budgeting and appropriations process. The study must include a review of the current process and the feasibility and desirability of providing a general fund appropriation to ITD rather than providing general fund appropriations to state agencies to pay ITD for services. The study must include consideration of any cost or cost-savings that may result and any transparency benefits of the potential budgeting and appropriation changes.

From the 1969 legislative session through the 1993 legislative session, state agency budgets included a data processing line item or an information services line item for fees paid to the Central Processing Division or Information Services Division of OMB. Beginning in the 1995 legislative session, funding for IT expenses, excluding large projects, was appropriated in the operating expenses line item in state agency budgets. The funding for large IT projects is included in the capital assets line item of agency budgets and is identified as a one-time funding item.

Currently, the funding for agency IT-related expenses is included in state agency budgets. State agencies make payments to ITD and external vendors for services rendered. The funding included in state agency budgets may be

derived from the general fund, state special funds, or federal funds. When state agencies make payments to ITD for services, ITD deposits the funds in an operating service fund. The Legislative Assembly authorizes ITD to spend money from the operating service fund along with other funding sources through the appropriations process. As a result, the majority of ITD's budget consists of special funds reflecting authorization to spend the funds collected from other state agencies for services rendered.

Each biennium, ITD publishes the estimated billing rates for the subsequent biennium. State agencies use the estimates for developing their budgets. During the biennium, ITD monitors the costs and revenues for each service to ensure one service is not subsidizing another. The federal government does not allow ITD to charge rates that generate revenues in excess of costs; therefore, ITD monitors its cash balances and adjusts rates accordingly. The department also monitors other entities' rates for similar services to maintain quality services at a fair price. Since state agencies develop their budgets based on estimates and may purchase services from external vendors, the amounts appropriated for IT-related expenses in state agency budgets may not accurately reflect the actual amounts paid to ITD for services.

The 2019 Legislative Assembly transferred 96 full-time equivalent (FTE) IT positions from 5 agencies in the 2019-21 biennium, and the 2021 Legislative Assembly transferred 53 FTE IT positions from 10 agencies in the 2021-23 biennium for an IT unification initiative. The transfers included a reduction of salaries and wages funding in each agency transferring FTE positions to ITD and a larger 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 salaries and wages line item for ITD also was increased to allow the department to bill and collect from each unification agency for the salaries and wages of the transferred FTE positions.

### **Committee Considerations**

The committee received information from ITD regarding the process for IT budgeting, including the advantages and disadvantages of the process and potential changes. The current budgeting process provides flexibility to ITD for spending and includes a review of state agencies' proposed IT projects but requires two appropriations, one in the agency budget and one in the ITD budget. Providing a general fund appropriation to ITD may increase the transparency of IT costs but may increase demand for services since agencies would not be limited to a certain level of services based on their budgets. Based on an analysis by ITD, the state is saving \$1.6 million per biennium with bulk licensing discounts and \$504,000 per biennium from standardized IT hardware purchases as a result of the unification initiative. The initial consolidation under the IT unification initiative increased the workload more than anticipated and resulted in state agencies perceiving a lack of timely responses from ITD.

The committee received information from the Department of Human Services, Department of Agriculture, Attorney General's office, State Treasurer's office, Department of Public Instruction, DOCR, and OMB regarding the advantages and disadvantages of the process for IT budgeting and potential changes to the process. The Department of Agriculture benefited from volume pricing through the IT unification initiative but encountered challenges with technology devices and policy changes that did not meet the department's unique needs. The Attorney General's office indicated support for providing a general fund appropriation to ITD for IT services to decrease agencies' administrative responsibilities to submit payments to ITD. Changing the budgeting process for IT services may simplify the budgeting process but may result in a loss of priority for small state agency IT service needs based on comments from the State Treasurer's office. The Department of Public Instruction, DOCR, and OMB also listed similar advantages and disadvantages of the current process for IT budgeting and potential changes.

### **Recommendation**

The committee makes no recommendation regarding the study of IT budgeting.

## **STATE REVENUES AND STATE REVENUE FORECASTS STUDY**

### **Overview**

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 also appointed a committee for the 2019-20 interim to continue studying state revenues and state revenue forecasts. For the 2021-22 interim, the Legislative Management assigned the study of state revenues to the committee. 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.

The Legislative Assembly is responsible for approving the state budget, including the revenue forecast. The legislative revenue forecast prepared at the end of each legislative session includes a base revenue forecast and any legislative changes. Legislative changes may include tax incentives and exemptions, tax rate changes, or transfers from other state funds. The Appropriations Committees adopt the base revenue forecast during the 1<sup>st</sup> week of the

legislative session and adjust the base revenue forecast in March during the legislative session based on the most recent projections for economic conditions.

The Office of Management and Budget also prepares revenue forecasts for consideration in developing the state budget. The Office of Management and Budget contracts for economic advisory services, currently Moody's Analytics, to provide economic projections as a basis for developing the revenue forecasts. The Office of Management and Budget coordinates the development of the revenue forecasts with the Tax Department.

### Committee Considerations

The committee issued a request for proposals for economic forecasting data and received a proposal from IHS Markit by S&P Global. The committee selected S&P Global for the consulting services. S&P Global provided information to the committee regarding forecasting results for general fund revenues, including a revised forecast for the 2021-23 biennium and a preliminary forecast for the 2023-25 biennium, as shown in the schedule below.

	2021-23 Biennium Revised Forecast			2023-25 Biennium Preliminary Forecast		
	Baseline Forecast	Pessimistic Forecast	Optimistic Forecast	Baseline Forecast	Pessimistic Forecast	Optimistic Forecast
Sales and use tax	\$1,940,581,097	\$1,909,469,742	\$1,966,253,315	\$2,037,598,143	\$1,949,233,312	\$2,118,360,091
Motor vehicle excise tax	287,940,849	279,744,131	292,063,175	338,775,687	306,870,106	351,059,529
Individual income tax	902,379,966	875,759,208	942,032,644	1,202,901,926	1,148,055,428	1,310,982,548
Corporate income tax	344,712,321	336,888,483	352,821,702	277,575,978	251,372,012	302,905,877
Total major tax types	<b>\$3,475,614,233</b>	<b>\$3,401,861,564</b>	<b>\$3,553,170,836</b>	<b>\$3,856,851,734</b>	<b>\$3,655,530,858</b>	<b>\$4,083,308,045</b>

Based on final legislative action in the November 2021 special legislative session, the major sources of general fund tax and fee revenue for the 2021-23 biennium totaled \$2,803,598,000, including \$1,765,334,000 from sales and use tax collections, \$260,854,000 from motor vehicle excise tax collections, \$570,400,000 from individual income tax collections, and \$207,000,000 from corporate income tax collections. The baseline amounts under the 2021-23 biennium revised forecast prepared by S&P Global reflect an increase of \$672,016,233, or 24 percent, compared to the November 2021 special legislative session forecast. The baseline amounts under the 2023+-25 biennium preliminary forecast prepared by S&P Global reflect an increase of \$1,053,253,734, or 38 percent, compared to the November 2021 special legislative session forecast.

The committee received information from S&P Global regarding the energy and agriculture industries in North Dakota. North Dakota oil prices are anticipated to decrease from approximately \$115 per barrel in 2022 to \$75 per barrel by 2025 while oil production is anticipated to increase from 1.1 million barrels per day in 2022 to 1.3 million barrels per day in 2025. Approximately 66 percent of oil wells in the Bakken Formation are profitable with oil prices over \$60 per barrel, but new oil well opportunities in the most productive areas may be exhausted by 2025 based on an analysis by S&P Global. The acres of corn and soybeans planted in North Dakota in 2022 increased significantly compared to 2021 while the acres of wheat planted in 2022 was similar to 2021.

The committee also received information from the North Dakota Petroleum Council, North Dakota Pipeline Authority, Department of Mineral Resources, North Dakota Stockmen's Association, North Dakota Wheat Commission, North Dakota Soybean Council, North Dakota Retail Association, and Associated General Contractors of North Dakota regarding industry and market trends. Workforce shortages and inflationary price increases are challenges for businesses, but high commodity prices have increased revenues in the energy and agriculture sectors of the economy.

### Recommendation

The committee makes no recommendation regarding the study of state revenues and state revenue forecasts. However, S&P Global will provide additional revenue forecasting updates to the Appropriations Committees during the 2023 legislative session.

## EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL PROCESS STUDY Overview

The Chairman of the Legislative Management directed the committee to study the provisions of Senate Bill No. 2290 (2021). As approved by the Legislative Assembly, the bill requires the Budget Section to approve requests to receive and spend state special funds and federal funds during the interim if the request exceeds \$50,000. If the request exceeds \$50,000 but is less than \$3 million, the spending request may not be amended by the Budget Section. Requests exceeding \$3 million may be amended by the Budget Section, and any amended requests approved by the Budget Section are deemed to be approved by the Emergency Commission. The Budget Section may not approve more than \$50 million of federal funds spending requests or more than \$5 million of state special funds spending requests in aggregate during a biennium. The Legislative Assembly must approve any spending request for federal funds exceeding \$50 million, but Federal Highway Administration emergency relief funding and emergency



recovery funding are exempt from the approval limits. The bill included an emergency clause and became effective April 29, 2021.

The Emergency Commission was created in 1915 when the Legislative Assembly appropriated \$25,000 to establish a state contingencies funding pool to address state emergencies. Until 1975, the Emergency Commission could approve any requests from the state contingencies funding pool up to the total amount appropriated by the Legislative Assembly; however, starting in 1975, Budget Section approval was required when the aggregate approvals from the state contingencies funding pool exceeded \$500,000. In Senate Bill No. 2015 (1999), the Legislative Assembly amended Sections 54-16-04.1 and 54-16-04.2 requiring Budget Section approval to receive and spend state special funds or federal funds if the request exceeded \$50,000.

During the 1989-90 interim, the Legislative Audit and Fiscal Review Committee noted various state agency audit reports included a recommendation for state agencies to comply with Section 12 of Article X of the Constitution of North Dakota, which requires public money to be spent only pursuant to an appropriation made by the Legislative Assembly. As a result, Senate Bill No. 2168 (1991) provided an appropriation of \$10 million of special funds authority to create a special funds state contingencies funding pool, which the Emergency Commission could disburse to state agencies as needed. However, the Legislative Assembly amended Section 54-16-04.2 in Section 11 of Senate Bill No. 2015 (1995) to remove the provision that limited the approvals of the Emergency Commission for state special funds to the amount appropriated by the Legislative Assembly. Therefore, the appropriation of special funds authority for a special funds state contingencies funding pool was removed from the budget in the 1995-97 biennium, and the state contingencies funding pool consisted of \$500,000 from the general fund only.

### **Committee Considerations**

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on an adjustment to the current limits. The bill draft would have increased the approval limit for federal funds by \$25 million, from \$50 million to \$75 million per biennium. The bill draft also would have increased the approval limit for state special funds by \$70 million, from \$5 million to \$75 million per biennium.

The committee considered a bill draft relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The bill draft replaces the approval limit of \$50 million for federal funds with an amount based on 2 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The bill draft replaces the approval limit of \$5 million for state special funds with an amount based on 1 percent of the current biennial state general fund budget as approved by the Legislative Assembly. The bill draft also includes other minor updates for clarity and consistency.

### **Recommendation**

The committee recommends a bill draft [23.0284.01000] for consideration during a 2021 special or reconvened legislative session or during the 2023 regular legislative session relating to Emergency Commission and Budget Section approval to accept and disburse federal funds and state special funds based on percentage limits. The committee also recommends the Legislative Assembly consider temporarily increasing the state special fund approval limit by \$15 million, from \$5 million to \$20 million, for the remainder of the 2021-23 biennium during a 2021 special or reconvened legislative session.

Although the bill draft was not considered during the November 2021 special legislative session, the Legislative Assembly increased the state special fund approval limit from \$5 million to \$20 million for 2021-23 biennium in Section 23 of House Bill No. 1506 (2021) during the special session.

## **CASH MANAGEMENT OF STATE FUNDS STUDY**

### **Overview**

The Chairman of the Legislative Management directed the committee to study the cash management of state funds. The study must include consideration of the constitutional and statutory provisions regarding the deposit, expenditure, and investment of state funds. Additionally, the study must include consideration of the timing of state revenues and expenditures; investment risks, returns, and expenses; and the costs and benefits of the state's current cash management practices compared to alternative cash management practices. The committee may consider input from representatives of OMB, State Treasurer, Bank of North Dakota, Board of University and School Lands, the State Investment Board, and other state agencies.

As provided in Section 12 of Article X of the Constitution of North Dakota, all money collected by state agencies must be paid to the State Treasurer for deposit to the credit of the state. The Legislative Assembly must provide an appropriation before the expenditure of any funds. Chapter 59-17 establishes prudent investor standards relating to the financial responsibility of trustees that invest and manage trust assets. Pursuant to Section 6-09-07, state funds must

be deposited with the Bank of North Dakota except as otherwise provided by law. In accordance with Section 54-11-01, the State Treasurer manages all state money except as otherwise provided by law, including the deposit of all revenue and payments for expenses. Income earned from deposits or investments must be credited to the general fund, except as otherwise provided by law.

### **Committee Considerations**

The committee received information from the State Treasurer's office, Bank of North Dakota, Retirement and Investment Office, Department of Trust Lands, and OMB regarding each agency's role in the cash management process, including challenges with the timing of state revenues and expenditures, investment of state funds, and suggestions for alternative cash management practices. Some inflows and outflows of state funding managed by the State Treasurer's office follow a regular pattern whereas others may be one-time or irregular transactions. State funds deposited at the Bank of North Dakota earn interest, and the deposit rates are based on the average of the rates offered by other large financial institutions in North Dakota. The Retirement and Investment Office and Department of Trust Lands are responsible for managing the investment of state funds, including the legacy fund, North Dakota Public Employees Retirement System main system plan, and common schools trust fund. The Office of Management and Budget has a limited role in the cash management process but agency staff assist with the development of the cashflow forecast for the general fund and coordinate cashflows with other state agencies.

### **Recommendation**

The committee makes no recommendation regarding the study of the cash management of state funds.

## **OTHER COMMITTEE DUTIES**

### **Review and Monitor the State Budget**

The Office of Management and Budget provided updates on the status of the general fund, balances of selected state special funds, and the status of federal funds. The June 30, 2021, ending fund balance of the general fund was \$1.1 billion, which was approximately \$400 million more than the 2021 legislative forecast primarily due to additional legacy fund earnings and unspent 2019-21 biennium general fund appropriations (turnback). In May 2021, the state received approximately \$1.0 billion related to federal state fiscal recovery funds. The forecasted individual income tax collections were adjusted in December 2021 to reflect the estimated decrease in collections resulting from an income tax credit approved during the November 2021 special legislative session. A new statewide budgeting software system was implemented in May 2022. As of September 2022, the United States Department of the Treasury approved the state's plan for broadband infrastructure grants from the federal Coronavirus Capital Projects Fund but had not approved the state's plan for statewide area career center grants.

The committee received information from the Department of Mineral Resources regarding the status of oil and gas development activities in the state. The core area of the Bakken Formation may be fully developed within 10 years. Oil wells outside the core area are being drilled with a 3-mile horizontal lateral segment, which provides a 50 percent increase in oil production with a 15 percent cost increase compared to oil wells with a 2-mile horizontal lateral segment. The use of 3-mile horizontal lateral segments in oil wells may result in a lower growth rate for oil-related jobs and economic activity compared to previous forecasts, which could affect future state revenues.

The Tax Department provided information regarding the status of the income tax credit authorized in House Bill No. 1515 (2021) and the oil extraction tax "trigger." The estimated fiscal impact of the individual income tax credit under House Bill No. 1515 was \$211 million for the 2021-23 biennium, including \$104 million for fiscal year 2022 and \$107 million for fiscal year 2023. Through April 26, 2022, \$96 million of tax credits were claimed with approximately 253,000 tax returns eligible for a full or partial credit out of 380,000 returns filed. The oil extraction tax "trigger" becomes effective if West Texas Intermediate oil prices exceed the "trigger" price for 3 consecutive months and ends when oil prices are less than the "trigger" price for 3 consecutive months. The "trigger" price for calendar year 2022 is \$94.69. When the provisions of the oil extraction tax "trigger" become effective, the tax rate increases from 5 to 6 percent and oil extraction tax collections would increase by approximately 20 percent.

The oil extraction tax rate increased from 5 to 6 percent effective for June 2022 oil production because oil prices exceeded the "trigger" price for 3 consecutive months. Because oil prices were below the "trigger" price in August and September 2022, the oil extraction tax rate may return to 5 percent effective for November 2022 oil production if oil prices continue to remain below the "trigger" price in October 2022. The state may receive approximately \$140 million of additional oil extraction tax collections if the higher tax rate is effective for oil production between June and October 2022 based on an estimate from the Tax Department.

The Legislative Council provided budget updates to the committee, including the 67<sup>th</sup> Legislative Assembly State Budget Actions report and supplement report for the 2021-23 biennium, the Compliance with Legislative Intent report for the 2021-23 biennium, the Analysis of State Trust Funds report for the 2019-21 and 2021-23 bienniums, the North Dakota Finance Facts pocket brochures for 2021 and 2022, a budget and fiscal trends presentation, a flowchart of the

estimated revenue sources and distributions for major state funds for the 2021-23 biennium, an oil and gas tax revenue allocation flowchart for the 2021-23 biennium, a preliminary budget outlook for the 2023-25 biennium, and a presentation comparing ongoing general fund revenues and appropriations.

### **Salary Increase Reports**

The committee received a report from OMB regarding executive branch employees who received a cumulative salary increase of 15 percent or more since March 31, 2021, pursuant to Section 54-44-04. Through August 31, 2022, 796 executive branch employees received a cumulative salary increase of 15 percent or more, of which 415 received an equity increase, 160 received an increase for a promotion, 97 received an increase for a responsibility change, and 124 received increases for other reasons.

### **Unmanned Aircraft Systems Status Reports**

The committee received information from the Department of Commerce regarding the status of the unmanned aircraft systems test site pursuant to Section 54-60-28 and the beyond visual line of sight unmanned aircraft system program pursuant to Section 54-60-29.1. The Northern Plains Unmanned Aircraft Test Site began operations in 2014. For the 2019-21 biennium, the Legislative Assembly appropriated \$28 million to establish a beyond visual line of site unmanned aircraft system program. The Legislative Assembly provided \$19 million of additional funding for the 2021-23 biennium for continued development of unmanned aircraft system programs.

### **Infrastructure Funds Status Reports**

The committee received information from the Bank of North Dakota regarding the status of the infrastructure revolving loan fund under Section 6-09-49, the legacy infrastructure loan fund under Section 6-09-49.1, and the water infrastructure revolving loan fund under Section 6-09-49.2. The infrastructure revolving loan fund had \$205.9 million committed to loans and \$37.5 million available for new loans as of August 31, 2022. The legacy infrastructure loan fund has not been utilized but would be used to provide liquidity for the infrastructure revolving loan fund as needed. The water infrastructure revolving loan fund had \$59.2 million committed to loans and \$10.2 million available for new loans as of August 31, 2022.

### **Environmental, Social, and Governance Policies Report**

The Department of Commerce provided a report on environmental, social, and governance policies pursuant to Senate Bill No. 2291 (2021). Based on the Department of Commerce's study, most major capital investments planned in North Dakota now include an environmental, social, or governance component. Environmental, social, and governance policies may present challenges for the energy industry in North Dakota, but carbon capture projects and other value-added opportunities may help North Dakota address challenges related to environmental, social, and governance policies.

The committee also received information from the State Treasurer's office indicating some ratings agencies have started to include environmental, social, and governance factors in their ratings for states, which could impact North Dakota's credit rating.

### **Committee Tours**

The committee toured the Energy and Environmental Research Center, Wilson M. Laird Core and Sample Library, and North Dakota Mill and Elevator Association related to the committee's responsibility to review and monitor the state budget, including the potential impact on the state budget resulting from advances in research and technology for the energy industry and the expansion of the Mill's operations.

The committee toured Grand Sky, a commercial unmanned aircraft research and development park adjacent to the Grand Forks Air Force Base, related to the committee's responsibility to receive updates on the status of the unmanned aircraft system programs in the state.

# HEALTH CARE COMMITTEE

The Health Care Committee was assigned five studies:

- Section 8 of House Bill No. 1010 (2021) directed a study of medication optimization. The study required a review of the implementation of clinical pharmacist-led medication optimization programs in individual, large group, and small group plans, including provider credentialing, billing standards and procedures, providing standards of care, patient monitoring, consistent documentation of outcomes and efforts related to deprescribing, and structuring an outcome reporting system for medication optimization programs. The study also required a review of changes necessary to state laws and administrative rules to implement effective medication optimization.
- Senate Bill No. 2212 (2021) directed a study of prescription drug pricing, importation, reference pricing, and the role pharmacy benefit managers play in drug pricing. The study required input from the Public Employees Retirement System (PERS), Workforce Safety and Insurance, the Insurance Commissioner, the State Board of Pharmacy, prescription drug wholesalers in Canada, and the public.
- Section 3 of House Bill No. 1465 (2021) directed a study of health insurance networks, including narrow networks. The study required consideration of the use and regulation of broad and narrow networks in the state by individuals and employers, the sales and marketing of broad and narrow networks, opportunities for consumer choice-of-provider, and premium differentials among states with choice-of-provider laws; a review of legislative and court history regarding the impact of choice-of-provider laws on exclusive provider organizations and preferred provider organizations and how choice-of-provider laws apply to risk-pooled health plans regulated by the federal Employee Retirement Income Security Act of 1974; the impact of the consolidation of the health care market on consumer cash prices, insurance plan deductibles and premiums prices, and consumer options; a comparison of health maintenance organizations provider network designs and other health insurer provider network designs; a review of how vertically integrated networks utilize health maintenance organization plans; and a comparison of premiums of health benefit plans offered in the individual and small group markets in relation to the provider network design associated with those plans along with the growth of value-based purchasing.
- House Concurrent Resolution No. 3014 (2021) directed a study of solutions to provider and end-user barriers to access to and utilization of telehealth services in this state.
- House Concurrent Resolution No. 3015 (2021) directed a study of the feasibility and desirability of implementing a community health worker program, including recommendations regarding a definition of a community health worker, the scope of work of a community health worker, the infrastructure for training of community health workers, the development of a community health worker certification process and related training curriculum and continuing education requirements, a strategy for community health worker services being Medicaid-reimbursed services, and private insurers' use of community health workers.

In addition to its study responsibilities, the committee was charged with receiving the following four reports and a directive:

- A biennial 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, pursuant to North Dakota Century Code Section 18-13-02(6).
- A biennial report from the Department of Human Services, State Department of Health, Indian Affairs Commission, and PERS 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 correct complications associated with diabetes, pursuant to Section 23-01-40.
- A biennial report from the State Department of Health regarding progress made toward the recommendations provided in Section 23-43-04 regarding stroke centers and stroke care and any recommendation for future legislation, pursuant to Section 23-43-04.
- An annual report from the Maternal Mortality Review Committee regarding the identification of patterns, trends, and policy issues related to maternal mortality, pursuant to Section 23-51-08.
- A directive to recommend a private entity with which to contract, 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, pursuant to Section 54-03-28.

Committee members were Representatives Robin Weisz (Chairman), Pamela Anderson, Mike Beltz, Ruth Buffalo, Gretchen Dobervich, Clayton Fegley, Zachary Ista, Jim Kasper, Lisa Meier, Marvin E. Nelson, Bob Paulson, Karen M. Rohr, and Greg Westlind and Senators Howard C. Anderson, Jr., Tim Mathern, Dave Oehlke, and Kristin Roers.

Representative George Keiser served on the committee until his death on December 22, 2021.

## **MEDICATION OPTIMIZATION STUDY**

### **Legislative History**

During the 2019-20 interim, the Legislative Management's Health Care Committee studied the health care system in the state and received a report from the Insurance Department indicating on a per-capita basis, hospital expenses in the state were the highest in the nation in 2017, and the growth rate of about 8 percent each year since 2010 was among the fastest in the United States. The report also indicated although the state has higher-than-average hospital expenses, the state's health insurance premium levels compare favorably with those of other states. The comparable premium levels likely are attributed to moderate prescription drug claims, lower-than-average administrative costs, favorable individual market demographics, and health plans with relatively high average deductibles.

One of the suggestions for policy alternatives from the 2019-20 report was the use of care management to deliver better care and health outcomes at a lower cost. Medication optimization is a potential benefit of provider consolidation, hospital system-owned health plans, electronic health records, and other health care changes used to better manage care. The report estimated medication nonadherence costs the health care system in the United States approximately \$300 billion each year with the potential impact of medication optimization to be more than \$500 billion.

### **Background**

The Center for Medication Optimization through Practice and Policy at the Eshelman School of Pharmacy at the University of North Carolina at Chapel Hill defines medication optimization as a patient-centered, collaborative approach to managing medication therapy which is applied consistently and holistically across care settings to improve patient care and reduce overall health care costs. According to research conducted at the Eshelman School of Pharmacy, when compared to other industrialized countries, the health care system in the United States consistently ranks at the bottom with respect to quality and cost and consumes 18 percent of the United States' gross domestic product, yet that consumption does not lead to better care for the population. It has been estimated 55 percent of Americans regularly take an average of four prescription medications and in 2008, it was estimated more than one-half of Americans take chronic medications. According to the National Health Expenditure Projections 2015-2025, health care spending is projected to be 20 percent of the United States' gross domestic product by 2025, meaning \$1 out of every \$5 the United States economy produces will be spent on health care.

In 2020, the Centers for Medicare and Medicaid Services estimated prescription drug expenditures in the United States were about \$335 billion, not including nonretail expenditures on medications. According to a 2020 editorial in the *Expert Review of Pharmacoeconomics & Outcomes Research*, as the population of the United States ages, the importance of optimizing medication usage to realize the maximum potential of medicines to improve patient-centered and cost-sensitive care increases. As a result of the shift from inpatient- and hospital-based care to less expensive outpatient- and community-based care without a reduction in outcome increases, the expansion of pharmacists-delivered care and improved utilization of clinical evidence will be critical to achieve the full benefit of medications.

### **Testimony and Committee Considerations**

The committee received testimony from the Insurance Commissioner and the Insurance Department's consultant, the State Board of Pharmacy, the North Dakota Pharmacists Association, health insurance carriers, the Department of Human Services, PERS, and other interested stakeholders.

Testimony indicated while there are a number of medication optimization efforts that take place in health systems, there are a number of medication optimization efforts that also can take place in community pharmacy settings such as transitions of care, remote patient monitoring using digital health tools, and disease state management. Testimony also indicated comprehensive medication optimization is a patient-centered approach delivered by qualified pharmacists working with the patient, physicians, and other members of the health care team. Testimony indicated providers utilize several programs, including medication therapy management, quality-based performance, value-based design drug lists, guided health, utilization management, drug utilization review, and biosimilars as medication optimization techniques.

Testimony from providers also indicated an important aspect of medication optimization is balancing the needs of the patient while keeping premiums affordable and using refill and patient adherence data to analyze whether a patient is adequately and reliably taking medications. Testimony also indicated there is a 49 percent rate of re-admission when a pharmacist does not speak to a patient posthospital discharge, compared to an 18 to 19 percent rate when a pharmacist speaks to a patient within 48 hours of discharge.

Testimony from the Insurance Department indicated medication optimization, also referred to as comprehensive medication management, would not be a benefit change or increase in benefits to the state's Essential Health Benefit Benchmark plan. Medication optimization would be a programmatic change among issuers to implement comprehensive medication management for eligible disease states to ensure members have access to doctors and pharmacists to review a patient's medications and have the medications adjusted to reduce possible side effects or adverse drug interactions. Testimony also indicated some health plans provide for benefits to access primary care doctors, which would be extended to apply to pharmacists participating in the comprehensive medication management program.

Testimony indicated the report resulting from the Insurance Department's study showed most issuers in the fully insured markets in the state have implemented a form of medication therapy management or comprehensive medication management for their members to engage and opt-in. Testimony also indicated the patient conditions and prevalence rates in the state for which an optimization program should be considered are diabetes, hypertension, hyperlipidemia, smoking cessation, chronic obstructive pulmonary disease, health failure, asthma, transplants, HIV, and mental health. Testimony further indicated although issuers already utilizing a form of medication optimization would not see a meaningful cost increase to hire or contract more pharmacists to build a more robust program, issuers without an integrated approach likely would need to contract with or hire internal pharmacy resources to review high-risk member drug mixes and possible adverse interactions, which likely would result in a premium change.

The committee determined some providers were already optimizing medication optimization techniques and a committee bill was not necessary. Committee members noted the value of providing a broad spectrum of care for patients and supported pharmacists engaging with patients.

### **Conclusion**

The committee makes no recommendation with respect to the medication optimization study.

## **PRESCRIPTION DRUG PRICING STUDY**

### **Legislative History**

As introduced, Senate Bill No. 2212 would have directed the State Department of Health to design a wholesale prescription drug importation program for the importation of prescription drugs from Canada in compliance with Section 804 of the federal Food, Drug, and Cosmetic Act. Section 804 directs the Secretary of the federal Department of Health and Human Services, after consultation with the United States Trade Representative and the Commissioner of Customs, to promulgate regulations permitting pharmacists and wholesalers to import Canadian prescription drugs into the United States. Several states, including Florida, Vermont, Colorado, Maine, New Mexico, and New Hampshire, have enacted laws establishing importation programs for prescription drugs from Canada.

### **Background**

On a per capita basis, the United States spends more on prescription drugs than any other country with prices in the United States averaging at least 2.56 times higher than the prices in 32 other countries. Prices in the United States were higher than those in comparison countries for brand name originator drugs but lower than those in comparison countries for unbranded generic drugs. The price for prescription drugs can be measured at different levels, such as the price at which drugs are sold to wholesalers or the price offered to the public by retail pharmacies, which includes wholesale and retail markups. Although the net price likely reflects rebates and other discounts paid by manufacturers after drugs are dispensed, those prices generally are not available.

Prescription drug spending is forecasted to remain at about 9 percent of national health care spending through 2028, which is down slightly from a previous average of about 10 percent of health care spending. According to the National Conference of State Legislatures, states are using various methods to address prescription drug spending by passing laws to allow for importation of drugs from abroad, limiting consumer cost-sharing to high-priced drugs, and requiring transparency in drug pricing by requiring manufacturers to justify drug price increases or provide data about research, advertising, and other costs.

### **Drug Pricing**

Pharmaceutical companies consider several factors when pricing drugs, including a drug's uniqueness, competition from other companies, a drug's effectiveness, and the research and development costs incurred to bring a drug to market. Unlike other countries, the United States does not regulate the price of prescription drugs extensively, which allows drug companies to set the price the market will bear. According to a May 6, 2021, report from the Congressional Research Service, although drug spending growth moderated in the early 2000s due in part to an economic recession and the expanded use of lower-cost generic drugs, drug spending spiked in 2014, due in part to the introduction of expensive new Hepatitis C drugs, increasing spending 13.5 percent in 2014 and 8.8 percent in 2015, before slowing to an average of 3.4 percent annual growth from 2016 through 2019.

In 2020, Health Affairs reported although generic drugs accounted for 90 percent of the 5.8 billion prescriptions in 2018, generic drugs comprised only 20 percent of drug spending while 10 percent of prescriptions for brand drugs constituted almost 80 percent of outpatient drug spending during the same period. The report further indicated biologic or specialty drugs accounted for one-half of outpatient drug spending while only comprising 2.2 percent of prescriptions.

Most health plans cover outpatient prescriptions through a distinct pharmacy benefit separate from coverage of medical services like physician and hospital care. Health plans typically contract with pharmacy benefit managers (PBMs) to negotiate drug prices with manufacturers and process prescription claims. Pharmacy benefit managers use formularies that contain the brand and generic prescription medications covered by a plan together with the patient cost-sharing requirements and utilization techniques to help control drug prices. Formularies generally have tiers with different out-of-pocket costs for patients based on various factors such as whether a drug is a generic, a preferred brand, or a nonpreferred brand.

### **Reference Pricing**

Reference-based pricing is a health care cost containment model that limits what a group health plan will pay for certain prescription drugs. Under this approach, the insurer covers the prices of low-cost, benchmark prescription drugs in therapeutic clusters, which are deemed to be close substitutes for one another in treating specific illnesses. Patients who prefer a higher priced substitute in a cluster must pay the difference between the retail price of that drug and the reference price covered by the insurer. The practice of international or external reference pricing sets maximum prescription drug prices in one country based on what other countries pay and is used widely outside the United States.

According to an analysis of 16 studies describing nine reference pricing policies from six countries, including Canada, Germany, Norway, and Spain, the *American Journal of Managed Care* found reference pricing policies led to decreases in drug prices and increases in utilization of targeted medications, while also reducing payer and patient expenditures and also determined the policies did not lead to increased use of medical services such as office visits and hospitalization. The use of reference pricing in various countries has been linked to reduced patient out-of-pocket and total payer expenditures and achieved cost-savings without a negative impact on resource consumption. Three studies that evaluated changes in patient expenditures found out-of-pocket savings ranging from 12 to 18 percent per month with four studies reporting a reduction of 14 to 52 percent on targeted drug classes on payer expenditures.

Over the last few years, states have introduced and passed dozens of bills that would reduce prescription drug prices and spending using several strategies, including the use of international reference pricing to set an upper payment limit for purchasers. According to the National Academy for State Health Policy, there are three key design choices that states face as part of the effort to create upper payment limits, including identifying the target populations, the site of the regulated transaction, and the acquisition of information, while also considering which countries to include as reference points, the target price to be paid, which drugs to include in the program, what remedies to impose on manufacturers that resist the structure, and how to ensure cost-savings accrue to patients and plans.

### **Pharmacy Benefit Managers**

Section 19-03.6-01 defines "pharmacy benefit manager" as a "person that performs pharmacy benefits management and includes any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payer, or health program administered by a state agency." Pharmacy benefit managers serve as middlemen and administer prescription drug plans and negotiate prices with pharmaceutical companies for inclusion in health insurance coverage lists, also known as formularies. Pharmacy benefit managers negotiate drug prices and rebates with a drug manufacturer and in exchange for rebates, PBMs will put certain drugs on formularies. The PBM also manages the payer's formulary list, and in exchange, the payer pays the PBM for administrative services for the actual drug and for the dispensing of the drug. In some cases, a PBM contracts with a pharmacy to dispense drugs directly and pays the pharmacy a drug dispensing fee. According to the Kaiser Family Foundation, of the 3.7 billion retail prescriptions in 2019, approximately three-quarters were processed by PBMs.

Although most state laws focus on the role of other actors in the supply chain, some states are imposing additional regulations on PBMs, such as requiring PBMs to register with the state as third-party benefit administrators, prohibiting gag clauses in pharmacy contracts with PBMs which bar pharmacists from telling consumers about less expensive options for filling a prescription, and making public PBM bids for services to provide more transparency. Recent federal laws also have banned gag clauses in Medicare and commercial insurance. In 2016, Vermont approved a law requiring manufacturer disclosure for drugs that underwent large percentage price increases and directing state regulators to compile a list of the drugs used by Vermont residents which experience the largest annual price increases. The Vermont law further required manufacturers to justify the price increase to the state Attorney General.

## **Importation**

Under current law, the importation of unapproved drugs, including foreign-made versions of Food and Drug Administration (FDA)-approved drugs with limited exceptions, generally is prohibited. A drug must be approved by the FDA before it may be sold in the United States. A drug imported by a consumer would not fulfill the detailed and explicit FDA premarket approval requirements. The federal Prescription Drug Marketing Act of 1987 clarified even for a drug the FDA had approved for sale in the United States which had been sold or transferred to a foreign country, only the manufacturer of the FDA-approved prescription drug is authorized to bring the drug back into the United States.

Although Congress enacted the federal Medicine Equity and Drug Safety (MEDS) Act, and subsequently the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to allow pharmacists and wholesalers to import unapproved versions of FDA-approved prescription drugs from Canada, the Secretary of the Department of Health and Human Services had not certified to Congress that the promulgation will not pose additional risk to the public's health and safety or result in a significant reduction in the cost of covered products to the American consumer. On September 23, 2020, the Department of Health and Human Services Secretary Alex Azar made the necessary certification to Congress and promulgated the final rule to implement the MEDS Act and allow for the importation of certain prescription drugs from Canada.

## **Testimony**

The committee received testimony from the Insurance Commissioner, the State Board of Pharmacy, the North Dakota Pharmacists Association, health insurance carriers, the Department of Human Services, PERS, PhRMA, Partnership for Safe Medicines, AARP, Prime Therapeutics, PCMA, 3 Axis Advisors, National Academy for State Health Policy, Healthcare Distribution Alliance, and other interested stakeholders.

## **Importation**

The committee received testimony indicating past Canadian drug importation attempts failed to deliver on promises of safety and affordability and the inaccurate savings projections should be considered in light of the serious safety risks posed by third-party drug importation. Testimony indicated states will have to complete inspections of entities in Canada to ensure the production quality meets those of the manufacturing facilities in the United States. Testimony also indicated although some states have enacted legislation to implement drug importation plans, none are active as a result of legal challenges and significant roadblocks enacted by Canada.

Testimony indicated several policy options to help patients pay less for prescription drugs included hard-dollar cost-sharing caps, offering lower cost-sharing options, making coupons count, and sharing the savings from rebates with patients. Testimony indicated pharmacy benefit management services include claims processing, price negotiation, formulary management, pharmacy and provider education, specialty pharmacies, mail-service, drug utilization review, and disease management and adherence initiatives. Testimony also indicated unless a patient is paying out-of-pocket, pharmacists have very little control over the price of a prescription.

## **Drug Manufacturers**

Testimony indicated drug manufacturers conduct the research, development, and marketing, and set prices based on what the market can tolerate and then manage the distribution of drug products to drug wholesalers, specialty pharmacies, hospitals, government entities, some health plans, and PBM-owned retail and mail order pharmacies. Testimony also indicated the main role of drug wholesalers is to make the purchasing of products more efficient by connecting pharmacies, hospitals, PBMs, and others to allow for easier access to medications. Testimony indicated the drug wholesale market is highly concentrated with three main entities maintaining 85 to 90 percent of total distribution in the United States. Testimony also indicated most of a drug wholesaler's revenue is generated by the difference between what the wholesaler pays to purchase a drug and what the wholesaler sells the same drug for to downstream entities.

## **Pharmacy Benefit Managers**

The committee received testimony indicating PBMs originated as claims processors and have morphed into complicated organizations, with the top three PBMs controlling 80 percent of the prescription drug market. Testimony indicated PBMs contract either directly with an employer or through a health insurance plan to manage the prescription drug benefit for enrolled beneficiaries while also contracting with drug manufacturers to secure steep discounts and rebates for formulary placement and contracting with drug wholesalers and manufacturers. Testimony also indicated PBMs generate revenue through various means, including fees charged to health plans and employers for managing prescription drug benefits, the difference between the purchase price and selling price of brand name, generic, and specialty medications, and rebates generated from drug manufacturers for formulary placement.

The committee received testimony indicating although the Insurance Department could regulate PBMs, the department lacks the subject matter expertise and would request additional staff. Testimony indicated the state's Medicaid program is part of the Sovereign States Drug Consortium for negotiation of supplemental rebates. Testimony also indicated rather than establishing a PBM run by the state, the state could benefit from joining a PBM consortium



like the one created by Washington, Oregon, and Nevada. Additional testimony indicated if the state became its own PBM through the use of the existing Medicaid claim system, there would be some limitations because the system is within a federal certified Medicaid Management Information System and numerous changes would be necessary, including to eligibility systems, provider enrollment, changes for benefit design, and contracts for formulary design and a rebate aggregator.

### **Pharmacies**

Testimony indicated pharmacies contract with wholesalers to purchase and stock their locations with medications and have little choice but to contract with a PBM to serve insurance beneficiaries. Testimony also indicated contract negotiations often are one-sided with the PBM having the leverage to set the terms, conditions, and reimbursement rates because the PBM has access to the pharmacy's patient information and can steer patients to specific pharmacies. Testimony indicated PBMs also use their leverage to extract other discounts or pharmacy price concessions from pharmacies, such as effective rates and claw-backs with pharmacy price concessions growing more than 91,500 percent between 2010 and 2019.

### **Committee Considerations**

The committee considered a bill draft relating to value-based purchasing for pharmaceuticals. The bill draft would require the North Dakota Department of Health and Human Services (DHHS) to study value-based purchasing to determine whether it is a feasible and cost-effective option for the state, including whether the state should join a consortium and, if so, which consortium would be the most effective for the state to join, and whether the state should establish a value-based purchasing program.

The committee considered a bill draft relating to value-based drug purchasing for medical assistance. The bill draft would require DHHS to participate in current and future innovative rebates and other program options.

The committee combined both bill drafts relating to value-based purchasing into a single bill draft.

The committee considered a bill draft relating to a prescription drug reference rate pilot program. The bill draft would require the Insurance Commissioner to design and implement a prescription drug reference rate pilot program to study the possibility of controlling excessive prices for prescription drugs.

Testimony received in support of the bill draft indicated the bill draft does not set a price but rather a limit on what purchasers pay. Testimony also indicated the bill draft uses reference pricing and does not create an importation mechanism. Testimony received in opposition to the bill draft indicated the program will adversely impact the people of the state because the real issues lie with the misaligned incentives in the supply chain and PBMs. Testimony also indicated Canadian prices are based on a policy that is discriminatory to individuals with disabilities and the bill draft infringes on the core of the free market philosophy.

The committee expressed concerns about the rising cost of prescription medications and the increasing level of influence of PBMs. The committee had differing opinions relating to how best to proceed but determined recommending a bill draft relating to a study of value-based purchasing and directing participation in rebate programs and a bill draft establishing a prescription drug reference rate pilot program would allow for additional discussion on these topics during the 2023 legislative session.

### **Recommendations**

The committee recommends a bill draft [23.0104.02000] directing a study of value-based purchasing and directing DHHS to participate in current and future innovative rebates and other program options.

The committee recommends a bill draft [23.0092.01000] to establish a prescription drug reference rate pilot program.

## **HEALTH INSURANCE NETWORK STUDY**

### **Legislative History**

As introduced, House Bill No. 1465 would have created an any willing provider (AWP) provision for health insurance policies, providing an insurer's policy may not deny a health care provider the right to participate as a participating provider for any policy on the same terms and conditions as are offered to any other provider of health care services under the policy. As amended in conference committee, the bill was hoghoused to provide for this study.

### **Background**

Generally, North Dakota health insurers are either organized as a preferred provider organization (PPO) or a health maintenance organization (HMO). Medica Health Plan and Sanford Health Plan are organized as HMOs, and Blue Cross Blue Shield of North Dakota, United Healthcare, and Medica are organized as PPOs. The type of entity--HMO or PPO--dictates what type of health plan the health insurance company can issue in the state. An HMO can issue both

HMO and PPO plans, whereas a PPO can issue a PPO plan or exclusive provider organization (EPO) plan. In North Dakota a PPO has limitations on issuing EPO plans. A primary difference between HMO, PPO, and EPO plans is the treatment of out-of-network coverage.

### **Broad and Narrow Networks**

Generally, health insurers may define and adjust the number, qualifications, and quality of providers in the insurer's network. To provide greater consumer value through lower premiums, a health insurer may sell a "narrow network" health plan that covers fewer providers, such as an HMO or EPO. Typically, providers negotiate rebated reimbursement rates with the expectation of higher volume due to the narrow network. Additionally, the narrower network may facilitate coordination of care.

In addition, network adequacy requirements, which refers to a health plan's ability to deliver the benefits promised by providing reasonable access to enough in-network providers, may limit an insurer's ability to issue narrow network plans. The federal Affordable Care Act included many reforms intended to make health care more affordable and accessible, including network adequacy standards for qualified health plans sold on the exchange. For example, under Section 26.1-47-03(1)(d), PPO organization health plans must offer health care services within a 50-mile radius of a covered person's residence. This section, in effect, has made EPO plans unfeasible in this state.

The National Association of Insurance Commissioners (NAIC) reports the insurance industry trend toward narrow network health plans caught the attention of state insurance regulators, and in 2015 the NAIC revised its model language for network adequacy. North Dakota has not enacted this NAIC model language.

### **Employee Retirement Income Security Act of 1974 Plans**

The federal Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that establishes minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. There are two types of ERISA health plans--the "self-funded" or "self-insured" plan, and the "fully insured" or "unfunded" plan. If a plan is self-funded, the employer pays the benefits directly through the employer's general assets or through a trust fund established for that purpose. If a plan is fully insured, the employer does not pay the benefits, but instead, the employer purchases an insurance policy, and an insurance company recognizes any profit or pays the losses. A health plan that falls completely outside the scope of ERISA, or that is otherwise excluded from ERISA coverage, is considered a non-ERISA plan, such as a government or church plan. Although ERISA provides for federal preemption under 29 U.S.C. 1144(a), which provides all state law is preempted to the extent the state law "relates to employee benefit plans," ERISA also provides for a savings clause under 29 U.S.C. 1144(b)(2)(A), which provides the savings clauses saves from preemption state laws that "regulate insurance." Additionally, ERISA's deemer clause, 29 U.S.C. 1144(b)(2)(B), prevents states from opting out of federal preemption of employee benefit law by deeming self-funded plans to be subject to the state law for purposes of the savings clause. The deemer clause essentially creates a distinction between self-funded and fully insured ERISA plans, providing a state cannot deem a self-funded ERISA plan an insurance company and thereby regulate the plan. Although the ERISA preemption provision limits the ability of states to regulate ERISA health plans, multiple states have enacted AWP laws that appear to meet the ERISA preemption standard for fully-funded ERISA health plans. For example, by initiated measure in 2014, South Dakota enacted South Dakota Codified Laws Section 58-17J-2, which provides:

**Patient choice--Health care provider participation.** No health insurer, including the South Dakota Medicaid program, may obstruct patient choice by excluding a health care provider licensed under the laws of this state from participating on the health insurer's panel of providers if the provider is located within the geographic coverage area of the health benefit plan and is willing and fully qualified to meet the terms and conditions of participation as established by the health insurer.

### **Vertical Integrated Network Utilization of Health Maintenance Organization Plans**

An HMO plan network may be vertically integrated, through common ownership, or may be virtually integrated, through contractual networks. According to the Insurance Department, Sanford Health Plan, organized as an HMO, primarily uses vertical integration through common ownership for its narrow network for its HMO plans, whereas Medica Health Plan, also organized as an HMO, uses virtual integration through contractual networks for its narrow network for its HMO plans.

### **Premiums and Value-Based Purchasing**

In a broad sense, value-based purchasing (VBP) is the linking of health care provider payments to improved performance by the health care provider. The primary purpose of VBP is to hold health care providers accountable for both the cost and the quality of care provided. Benefits recognized by patients might include reduced costs, increased patient satisfaction, a reduction in medical errors, and the promotion of healthy habits.

Multiple reimbursement models exist under the umbrella of VBP, including pay-for-performance, under which providers typically are reimbursed for services using a fee-for-service structure, but providers also can qualify for value-based incentive payments or penalties based on quality and cost performance; shared savings arrangements, under which a provider is reimbursed under a fee-for-service model, but if a provider can reduce health care spending below an established benchmark set by the payer, the provider can retain a portion of the savings produced; and capitation payments, under which the provider takes on full financial risk for care quality and health care spending.

An HMO plan is designed based on capitated payments. The differences between fee-for-service payments and capitated payments were discussed in a 1996 Health Affairs article, which noted:

Under retrospective fee-for-service payment, every component of the health care delivery system is both a cost center and a revenue center. Services are reimbursed a la carte, with more cost bringing in more revenue. The profit centers are those services and facilities that can price highest above cost; historically, this glory has accrued to specialist physicians and acute care hospitals. Under prospective capitation payment, however, every component of the delivery system is a cost center and not a revenue center. Revenues are received on a monthly per capita basis regardless of the level of services used. The profitability of the health care provider organization now depends on its ability to win contracts from HMOs, to attract patients, and to manage care so that expenditures are held below the capitated payment rate. All three of these objectives require the organization have an adequate number of primary care physicians and physicians to cooperate in managing the costs and the quality of care.

### **Testimony and Committee Considerations**

The committee received testimony from the Insurance Department, health insurance agents, health care providers, and health insurance carriers.

The committee received testimony regarding unintended consequences that may arise if AWP legislation is enacted. Testimony indicated narrow network plans offer a premium cost saving to the consumer and AWP legislation may result in the loss of this cost savings. Testimony indicated when narrow network plans are offered to a group, the insurance companies require both the broad and narrow networks be offered, so AWP legislation may result in less consumer choice.

The committee received testimony in support of AWP legislation. Testimony indicated consolidated market power reduces competition and patient choices. Testimony indicated AWP legislation increases patient choice by allowing patients to choose their health care provider without network limitations; guarantees access to lower cost providers, such as ambulatory surgery centers; and lowers patient costs and travel.

The committee received testimony comparing North Dakota's individual, small group, and large group markets to those markets in South Dakota, which codified AWP in 2014. The testimony indicated:

- South Dakota's health insurance administrative costs have not increased due to AWP, but instead are lower than North Dakota's;
- South Dakota's health insurance premium rate of increase in the small and large group markets is lower than North Dakota's;
- Any willing provider legislation in South Dakota has not negatively impacted hospital operating revenues; and
- Any willing provider legislation in South Dakota has not impacted hospital operating expenses.

The committee received testimony in opposition to AWP legislation. The testimony indicated:

- A narrow network plan saves a consumer 20 percent in premiums as compared to a broad network;
- Broad and narrow networks empower consumers with different options and allow the consumer to choose a health plan that meets the needs of the consumer;
- Market regulations and business practices protect consumer choice through benefit design, access and availability standards, network adequacy regulations, and employer groups and health plan options;
- South Dakota's AWP law passed in 2014, and through litigation and a settlement, the result is South Dakota's AWP law is very similar to that of North Dakota;
- Narrow networks should be encouraged, not eliminated, because narrow networks offer consumers choice; and
- Any willing provider legislation in North Dakota would impact nearly 25 percent of the health insurance market.

The committee received testimony regarding the use of narrow networks by integrated insurance networks. Testimony indicated broad and narrow networks are not unique to integrated insurance networks. The committee was informed in one integrated insurance narrow network in the state, 50 to 60 percent of the claims volume comes from the network's providers.

The committee received testimony regarding accountable care organizations (ACOs). Testimony indicated an ACO is a group of health care providers and facilities that come together voluntarily to provide coordinated high-quality care to their patients.

The committee recognized the value of retaining the broad and narrow networks utilized in this state. The committee determined there is no need to revise the law to provide for AWP.

### **Conclusion**

The committee makes no recommendation with respect to the health insurance network study.

## **TELEHEALTH SERVICES STUDY**

### **Legislative and Executive History**

Section 26.1-36-09.15, which was enacted in 2017, provides for health insurance coverage parity for telehealth services. The 2017 legislation was an expansion under Section 54-03-28 of the 2015 legislation that provided for telemedicine coverage under the state's PERS health benefits coverage. As introduced, House Bill No. 1038 (2015) may have provided for coverage parity and payment parity; however, as enacted, the bill clearly was limited to coverage parity.

Senate Bill No. 2179 (2021), as introduced, would have provided for payment parity for telehealth services. As amended by the Senate, the bill would have provided for a Legislative Management study of telehealth. The amendments passed by the House would have provided for a telehealth payment parity pilot project. The bill failed to pass in the House.

House Bill No. 1465 (2021) amended Section 26.1-36-09.15, codifying several provisions of Governor Doug Burgum's Executive Order 2020-05.1. Specifically, the bill defines the term "secure connection," provides the term "telehealth" includes audio-only telephone for the purpose of an e-visit or a virtual check-in, and defines the terms "e-visit" and "virtual check-in."

In response to the declared state of emergency related to the Coronavirus (COVID-19) pandemic, on March 20, 2020, Governor Burgum issued Executive Order 2020-05.1. This order included the following provision addressing telehealth services:

For purposes of expanding health care and behavioral health services across the State, certain statutory and regulatory requirements must be suspended as follows:

- a. The "secured connection" provision of NDCC § 26.1-36-09.15(1)(g)(1) is hereby expanded to include the guidance issued by CMS on March 17, 2020.
- b. The "audio-only" provision of NDCC § 26.1-36-09.15(1)(g)(3) is hereby suspended. Telehealth services shall be provided as defined by NDCC § 26.1-36-09.15(1)(g)(1) and (2) to include audio-only telehealth services.
- c. Insurance carriers shall cover virtual check-ins and e-visits for established patients in accordance with the guidance issued by CMS on March 17, 2020.
- d. The provisions of NDCC § 26.1-36-09.15(4) are hereby suspended. Insurance carriers shall not subject telehealth coverage, including virtual check-ins and e-visits for established patients, to deductible, coinsurance, copayment or other cost sharing provisions.
- e. No insurance carriers shall impose any specific requirements on the technologies used to deliver telehealth, virtual check-in and e-visit services (including any limitations on audio-only or live video technologies) that are inconsistent with these requirements.
- f. The North Dakota Insurance Commissioner may issue guidance on the implementations of these requirements.

This executive order remained in effect until the expiration of the state's declared State of Emergency, which occurred on April 30, 2021.

## Background

### State Activities

Legislation addressing health insurance coverage of telehealth generally addresses coverage parity or payment parity. Coverage parity, also known as service parity, occurs when the law requires health services covered for in-person visits be the same as those covered for health services provided by telehealth visits. Payment parity provides for equal insurance reimbursement for in-person and telehealth visits. The Kaiser Family Foundation reports as of fall 2019, 41 states and the District of Columbia had laws covering health insurance reimbursement for telehealth. In approximately one-half of the states, coverage parity is codified and in fewer than one-half of the states, payment parity is codified. Telemedicine typically is reimbursed at lower than equivalent in-person care; however, in response to COVID-19, more states are enacting payment parity legislation.

### Federal Activities

Before the COVID-19 pandemic, Medicare coverage of telehealth services under traditional Medicare was limited. However, in response to the COVID-19 pandemic, the federal Centers for Medicare and Medicaid Services issued guidelines and a related fact sheet to broaden access to Medicare telehealth services so beneficiaries would be able to receive a wider range of services from providers without having to travel to health care facilities. These broadened telehealth services remain in effect during the federal public health emergency, which was most recently renewed in April 2021.

The COVID-19-related changes to Medicare include:

- Which traditional Medicare beneficiaries can receive telehealth services and where;
- What technologies traditional Medicare beneficiaries can use to access telehealth services;
- What type of providers can get reimbursed by Medicare for telehealth visits;
- What services traditional Medicare beneficiaries can receive through telehealth;
- Additional services, other than telehealth, which are delivered virtually and covered by traditional Medicare;
- How Medicare pays for telehealth services;
- What traditional Medicare beneficiaries pay for telehealth services;
- How telehealth is covered under Medicare for beneficiaries and providers participating in alternative payment modes; and
- How coverage of telehealth services differs in Medicare Advantage plans.

### Benefits

There are perceived benefits to using telehealth which may be especially relevant in rural states such as North Dakota. The National Conference of State Legislatures reports that "[b]y improving access to lower-cost primary and specialty care, telehealth can provide timely, accessible care in lower-cost environments and help reduce expensive emergency room (ER) visits. Aside from primary care settings, telehealth is also used in a variety of specialty areas such as behavioral and oral health." In addition, "[t]elehealth also allows for consultation between providers, which can build capacity among practitioners in rural areas, where recruiting and retaining providers remains challenging. It also can allow providers to offer care in various settings, using the full extent of their education and training within their scopes of practice, with remote supervision or other support." Although there may be perceived benefits to telehealth, the National Conference of State Legislatures recognizes the research on the effectiveness of telehealth is evolving.

### Barriers

A reliable and affordable Internet connection for both the patient and the provider is necessary for many telehealth platforms. In its 2019 report, the North Dakota Broadband Plan, the Information Technology Department noted that although the state has a large land area and a small population, the state is ranked high for Internet access and overall infrastructure. The Information Technology Department report specified goals and opportunities to grow and support the state's broadband capacity and infrastructure.

Americans are connected to the world of digital information via smartphones and other mobile devices. These devices can be used by patients to participate in telehealth. The Pew Research Center reports 85 percent of Americans own a smartphone, and although cell phone ownership crosses a wide range of demographic groups, smartphone ownership varies based on age, household income, and education. A person is less likely to own a smartphone as the age of the person increases, the income of the household decreases, and the person's residence becomes more rural.

The Kaiser Family Foundation reports as of fall 2019, 41 states and the District of Columbia had laws governing reimbursement for telemedicine services in fully insured private plans. In approximately one-half of the states, including

North Dakota, the law provides for "service parity," which provides the plan must cover telemedicine services if it covers the service in-person. Fewer states require "payment parity," which provides telemedicine services must be reimbursed at the same rate as equivalent in-person services.

Unlike a fully insured plan, which must comply with both state and federal laws, a self-insured health plan is regulated by federal law. These plans may choose whether to cover telemedicine services. The Kaiser Family Foundation reports the majority of large-employer plans, including self-insured plans, cover some telemedicine services.

Typically, a provider must be licensed in the state the patient receiving services is located. Each state addresses these situations based on state law. However, multiple states participate in licensure compacts, allowing providers of participating states to practice in other compact states.

### **Testimony**

The committee received testimony from the Insurance Department, health insurance carriers, health care providers, the National Conference of State Legislatures, the Information Technology Department, the Center for Rural Health, and other interested stakeholders.

#### **Health Insurance Carriers**

The committee received testimony from health insurance carriers regarding legislative and executive trends; the utilization of telehealth, including the telehealth mental health experience; and future policy and market outlooks.

The committee received testimony indicating all 50 states implemented some sort of telehealth policy change due to the COVID-19 pandemic. Testimony indicated North Dakota was one of multiple states that used executive authority to require health insurers enact multiple telehealth coverage changes. Testimony indicated North Dakota was one of multiple states that enacted legislation to make some of the temporary telehealth benefit enhancements permanent.

The committee received testimony that during 2020, the top diagnoses through telehealth were related to behavioral and mental health. Testimony indicated for anxiety, depression, and trauma, about 70 percent of the claims were telehealth visits; ages 35-49 used telehealth most when seeking mental health care; and for mental health telehealth services women outnumbered men by a 3-to-2 ratio.

The committee received testimony indicating telehealth will continue to be evaluated at the state and federal levels. Testimony indicated there is a focus on monitoring how patients will utilize telehealth postpandemic.

#### **Health Care Providers**

The committee received testimony from health care providers. Telehealth and virtual care can increase access to care for rural communities, underserved and vulnerable patient populations, and individuals unable to secure in-person care, ensuring everyone has access to safe, effective, and appropriate care when and where they need it. Benefits of telehealth include improved access to health care services, cost efficiencies, improved quality of health care services, meeting consumer demand, and support of rural health care and local economies.

The committee received testimony indicating the unanswered questions relating to telehealth include:

- Where are the health care disparities?
- Can telehealth relieve any of these disparities?
- Where are the broadband "deserts" and how can these be addressed?
- What kind of telehealth services are North Dakotans using and where are they located?
- Why providers are and are not limiting their use of telehealth?

The committee received testimony regarding the eAsthma clinic, a program that uses telehealth to treat pediatric patients. The testimony indicated telehealth processes can be designed to improve health care delivery to North Dakotans.

#### **Behavioral Health**

The committee received testimony telehealth is a tool to increase access to mental health services and make these services more convenient and accessible to populations that previously had difficulty accessing the service delivery system.

Testimony indicated for consumers and families, telebehavioral health services led to increased access to experienced providers and high-quality care for individual needs; improved access to continuity of care; increased

convenience that removes traditional barriers to care, including geography, accessibility, employment, child care, and caregiver responsibilities; and easier coordination of care among many specialists. Testimony indicated telebehavioral health services also reduce stigma for those living in rural communities by giving comfort that their experiences will remain confidential. Telebehavioral health services made it easy to reduce psychological barriers to treatment access for people who have difficulty leaving their homes.

### **National Conference of State Legislators**

The committee received testimony identifying the following telehealth policy levers: Medicaid; private insurance, including payment parity and coverage parity; cross-state licensing, including licensure compacts; telehealth modalities; authorized telehealth providers; authorized services for telehealth; site restrictions; teleprescribing; and patient-provider relationships.

The committee received testimony providing an overview of payment parity trends. Testimony indicated the neighboring states of Iowa, Minnesota, and Nebraska have enacted telehealth payment parity legislation.

### **Center for Rural Health**

The committee received testimony summarizing a 2022 survey of 14 critical access hospital chief executive officers and 4 representatives of association, consulting groups, and academic centers. Testimony indicated the survey provided that during the COVID-19 pandemic, utilization of telehealth peaked and following the pandemic, utilization returned to prepandemic levels. The barriers identified included:

- Payment and reimbursement;
- Local provider culture and attitude;
- Specialist provider culture and attitude;
- Patient culture and attitude; and
- Broadband availability.

The recommendations resulting from the survey included addressing inadequate payment for telehealth services, the need for support in patient education on using simple technology, the need for technology funding, and addressing the rural health care workforce shortage.

### **Information Technology**

The committee received testimony providing an overview of federal legislation, including the federal Infrastructure Investment and Jobs Act and the related Broadband Equity, Access, and Deployment (BEAD) program, Affordable Connectivity program, and the Digital Equity programs. The BEAD program consists of \$42 billion that will be distributed to states and territories to help finance broadband deployment projects. The testimony indicated the BEAD program focuses on underserved areas first. The Affordable Connectivity program helps low-income households pay for Internet services and connected devices. The goal of the Digital Equity programs is to ensure all people and communities have the skills, technology, and capacity needed to reap the full benefits of a digital economy.

### **Committee Considerations**

The committee considered whether to recommend legislation to provide for telehealth payment parity. The committee did not reach a consensus on whether to pursue telehealth payment parity legislation.

### **Conclusion**

The committee makes no recommendation with respect to the telehealth services study.

## **COMMUNITY HEALTH WORKER STUDY**

### **Legislative History**

North Dakota does not regulate community health workers (CHWs), define CHW or CHW scope of practice, provide medical assistance reimbursement for CHW services, or have a state CHW training or certification program. Senate Bill No. 2321 (2015) would have provided for medical assistance reimbursement of certified CHWs, but failed to pass in the House. However, in Indian Country, community health representatives (CHRs) may bill Medicaid for targeted case management services provided to recipients of long-term care services.

### **Background**

The United States Department of Health and Human Services Health Resources and Services Administration (HRSA) provides:

Community health workers are lay members of communities who work either for pay or as volunteers in association with the local health care system in both urban and rural environments and usually share ethnicity, language, socioeconomic status, and life experiences with the community members they serve. They have been identified by many titles such as community health advisors, lay health advocates, "promotores(as)," outreach educators, community health representatives, peer health promoters, and peer health educators. Community health workers offer interpretation and translation services, provide culturally appropriate health education and information, assist people in receiving the care they need, give informal counseling and guidance on health behaviors, advocate for individual and community health needs, and provide some direct services such as first aid and blood pressure screening.

Although the scope of practice of a CHW likely is related directly to how the term "community health worker" is defined in the jurisdiction of practice, there are some traditional roles CHWs fill. Community health workers typically work in the communities in which they live, working in community health facilities providing case management, client education, and followup care. Services provided by CHWs often include:

- Creating connections between vulnerable populations and health care systems;
- Providing health education on topics related to chronic disease prevention, physical activity, and nutrition;
- Performing health screenings, informal counseling, and referrals; and
- Facilitating health care and social service system navigation.

A CHW national employer inventory of all 50 states was conducted as part of a HRSA study in 2007. This survey provided the most frequently reported health issues for which employers chose interventions that included CHWs: women's health (46 percent of respondents); nutrition (48 percent); children's health (41 percent); pregnancy/prenatal care (41 percent); immunizations (37 percent); and sexual behavior (34 percent).

As of 2019, at least nine states had enacted laws or passed regulations for CHW certification. Training requirements for CHWs vary widely from state to state, ranging from formal education to on-the-job experience. Almost half of the states have CHW training programs, some of which are connected to certification and were established by state agencies.

### **Testimony**

The committee received testimony from the Indian Affairs Commission and tribal representatives, health care providers, the National Academy for State Health Policy, the Department of Human Services, representatives of other states, and other interested stakeholders.

### **Overview**

The committee received an overview of CHWs, including a survey of how many states' Medicaid programs reimburse for CHW services; what type of Medicaid payment mechanism is used by states for Medicaid reimbursement of CHW services, such as state plan amendment, Section 1115 demonstration, fee-for-service reimbursement, and managed care contracts; how CHWs have been used in response to the COVID-19 pandemic; and how states can partner with CHW associations in supporting CHWs, such as certification and training to qualify for Medicaid reimbursement. Testimony indicated areas of consideration for states considering support of CHWs include:

- Defining reimbursable services and considering "medicalization" of CHW services;
- Setting standards for CHW qualifications for enrollment with Medicaid;
- Considering utilization and eligibility for Medicaid-reimbursable services;
- Considering opportunities for partnership with managed care and existing care coordination services;
- Considering workforce development needs; and
- Setting community priorities to shape strong, fair CHW programs.

### **Other States**

The committee received an overview of how Oregon implemented CHWs. In 2014, the Oregon Integrated and Coordinated Health Care Delivery System was established through a Section 1115 waiver which prompted the launch of coordinated care organizations and required development of traditional health workers. Testimony indicated the five types of traditional health workers in Oregon are CHWs, peer support specialists, peer wellness specialists, personal health navigators, and birth doulas.



The committee was informed the Oregon Health Authority Office of Equity and Inclusion is charged with partnering with communities to eliminate health gaps and promote optimal health in Oregon and with oversight for the traditional health worker program, including training, continuing education, and certification.

In Oregon, CHWs are financed differently based on the setting. In community-based organizations, CHWs generally are funded through grants and contracts, and in health care settings, CHWs are funded through health-related services, fee-for-service, and value-based payments.

The committee received an overview of the CHW infrastructure in place in South Dakota. The timeline for implementing a CHW system in South Dakota was:

- In 2015, the South Dakota Department of Health conducted an environmental scan and statewide analysis of the CHW workforce.
- In 2016, the South Dakota Department of Health and South Dakota Department of Social Services co-facilitated a workgroup to develop recommendations for CHWs in South Dakota.
- In 2019, the South Dakota Department of Social Services announced CHW services as a covered service of South Dakota Medicaid.
- In 2020, the South Dakota Department of Health launched Community Health Workers of South Dakota (CHWSD) to promote and develop the CHW workforce in South Dakota and developed the CHWSD 2021-23 Strategic Plan.
- In 2021, CHWSD received additional funding through the Centers for Disease Control and Prevention (CDC) Health Disparities Grant.

The committee received testimony regarding CHWSD training programs and how training relates to reimbursement, including Medicaid reimbursement.

### **Medicaid**

The committee received testimony from the Department of Human Services regarding steps to be taken before Medicaid could enroll or reimburse CHWs, which would take approximately 2 to 3 years to establish and would include:

- Implementing a scope of practice for CHWs in law or rule;
- Implementing a standardized licensure or certification system for CHWs;
- Developing a Medicaid fiscal estimate based on CHW scope of practice, CHW availability in the workforce, and the utilization of CHWs by enrollees; and
- Adopting administrative rules and possibly state plan updates, system changes, and provider enrollment updates, which would be dependent on appropriation of funds and increasing Medicaid staff resources.

### **Health Care Providers**

The committee received testimony from a health care provider network regarding how it utilizes CHWs in Bismarck, Fargo, Hillsboro, and Mayville. Testimony indicated CHW program goals include strengthening the bridge between ambulatory care and community, increasing social determinants of health assessments and support, securing stable funding and reimbursement for CHW work to support sustainability, and increasing referrals to chronic disease self-management programming.

The committee received information regarding allowing community paramedics to operate as an extension of public health, primary care, or other stakeholder partnership to improve the health of the community. The committee received testimony on the status of adoption of administrative rules regarding community paramedics.

The committee received testimony from a representative of a community health center regarding the value of CHW services in the community health center setting. The testimony was in support of providing grant funding for CHWs as well as Medicaid and private insurance reimbursement for CHW services.

### **Community Health Representatives**

The committee received testimony regarding the community health representatives (CHR) system used by the Indian tribes in the state. Testimony indicated although the CHR programs differ from tribe to tribe, a majority of the CHR workforce live in and are active members of the communities they serve. Testimony indicated this integration builds trust, a key element of the CHR program.

The committee received testimony regarding CHRs who work on the Mandan, Hidatsa, and Arikara Nation as frontline public health workers who facilitate access to quality and culturally competent services. The CHRs are funded through a 638 contract with Indian Health Services (IHS) and are trained through an IHS training program. Testimony indicated challenges faced by the CHRs include staffing, funding, reimbursement for services, and the Medicaid enrollment process. Activities and services provided by the CHRs include:

- Home visits, which may include blood pressure and blood sugar checks, certified nurse assistant services, light cleaning, and food shopping and preparation assistance;
- Medication pickup and delivery;
- Car seat and crib safety demonstrations;
- Transportation to and from health care appointments;
- First aid and cardiopulmonary resuscitation training services;
- Community health education; and
- Safety services at powwows.

### **Committee Considerations**

The committee recognized the value CHWs provide in the health care delivery system. The committee considered a bill draft that would establish a CHW taskforce to develop a data-driven plan for CHW education and training, regulation of CHWs, and medical assistance reimbursement for CHW services. Some members of the committee were concerned the bill draft would delay implementation for 2 years. Other committee members viewed the taskforce activities as a tangible step forward in working with stakeholders to develop CHW, education, training, and regulation standards.

The committee considered a bill draft that would provide for certification of CHWs and a Medicaid state plan amendment to provide for medical assistance reimbursement for CHW services. Some members of the committee were concerned the bill draft lacked sufficient guidance for CHW education and regulation. Other committee members recognized the Department of Health and Human Services has the necessary expertise to develop regulatory provisions for the practice of CHWs and should move forward on a Medicaid state plan amendment as soon as possible. In considering the two bill drafts, the committee did not reach consensus on which approach to develop a CHW initiative had more merit.

### **Recommendations**

The committee recommends a bill draft [\[23.0069.01000\]](#) to establish a CHW taskforce to develop a data-driven plan for CHW education, training, regulation, and medical assistance reimbursement.

The committee recommends a bill draft [\[23.0103.02000\]](#) to provide for certification of CHWs and a Medicaid state plan amendment to provide for medical assistance reimbursement for CHW services.

## **STATE FIRE MARSHAL REPORT**

Section 18-13-02 directs the State Fire Marshal to review the effectiveness of the section and report any findings and recommendations to the Legislative Management. Section 18-13-02 requires all cigarettes sold or offered for sale in the state to be tested in accordance with the American Society of Testing and Materials (ASTM) E2187-04. The report indicated although the number of reported fires caused by cigarettes has increased in recent years, so has the overall number of fires reported. The report also indicated the effectiveness of the fire safe cigarette program is difficult to decipher with the data collected.

The report recommended consideration be given to updating the language of Section 18-13-02 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)." The change would clarify the standard to be used and enable the State Fire Marshal's office to enforce the safest and most current standards.

## **DIABETES REPORT**

The committee received a report, pursuant to Section 23-01-40, from a representative of the Department of Human Services, State Department of Health, Indian Affairs Commission, and PERS 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 indicated each of the contributing agencies agreed diabetes can best be prevented through a cross-sector, community-based approach with goals to increase:

- Access to nutritious food options, addressing availability, affordability, food security, and knowledge among communities;

- Wellness programming for youth, including physical activity and cooking instruction;
- Equitable access to quality medical care that is aligned with best practice guidelines; and
- Mental and behavioral health services for individuals with diabetes or at risk for diabetes.

The report indicated the following action items:

- Institute minimum health insurance policy coverage requirements for diabetes treatment and services;
- Support a comprehensive transition toward value-based care and reimbursement models designed to increase utilization of preventive care, improve quality of services, and reduce incurred costs related to the treatment of chronic disease;
- Support cities and counties implementing transformation projects that encourage year-round, healthy living and physical recreation for residents;
- Develop sustainable food systems at the community level; and
- Implement policy and system changes at the state and local level which address socioeconomic factors contributing to rising obesity rates.

The report indicated the following action items have a fiscal element:

- Development of a community grant fund to support strategies to reduce diabetes and risk factors and to identify root causes, and implementation of policy, system, and environmental change.
- Development of a statewide, multi-agency committee to review and approve community grant fund applications and to provide in-depth technical assistance for implementation.

## **STROKE REPORT**

The committee received a report from the State Department of Health regarding progress made toward the recommendations provided in Section 23-43-04, relating to stroke centers and stroke care. The report indicated the department has established and maintained a comprehensive stroke system that ensures nationally recognized guidelines and protocols are followed with the intention to improve outcomes and reduce mortality and morbidity related to strokes.

## **MATERNAL MORTALITY REPORT**

The committee received a report from the Maternal Mortality Review Committee (MMRC) as required by Section 23-51-08. The report indicated although MMRC was founded in 1954 as a subcommittee of the North Dakota Society of Obstetrics and Gynecology and is one of the oldest MMRCs in the country, House Bill No. 1205 (2021) established a maternal mortality review committee and provided a continuing appropriation. The Maternal Mortality Review Committee's objectives include remaining nonpartisan and performing an annual review of maternal deaths in the state and providing education. The Centers for Disease Control and Prevention's definition of maternal death defines a pregnancy-related death as the death of a woman while pregnant or within 1 year of the end of the pregnancy from any cause related to or aggravated by the pregnancy. The World Health Organization defines maternal death as the death of a woman within 42 days of termination of pregnancy, from any cause related to pregnancy. North Dakota ranks 21<sup>st</sup> out of 50 states with 20.1 maternal deaths per 100,000 births, California ranks 1<sup>st</sup> with 4 maternal deaths per 100,000 births, and Louisiana ranks 46<sup>th</sup> with 58.1 maternal deaths per 100,000 births. In 2021, North Dakota had a total of 10 maternal deaths, 8 of which had possible pregnancy association, and 2 of which met the CDC's definition of maternal death.

## **HEALTH INSURANCE MANDATE COST-BENEFIT ANALYSIS RECOMMENDATION**

Section 54-03-28, which requires a cost-benefit analysis on a legislative measure providing for a health insurance mandate, was amended by Senate Bill No. 2130 (2021). The bill sought to provide additional time in which to conduct the cost-benefit analysis. Section 54-03-28 provides a measure may not be referred to committee unless the cost-benefit analysis is appended to the measure. A standing committee may request a cost-benefit analysis if the analysis is missing or the measure is amended.

The Insurance Commissioner received proposals from Milliman, Inc., NovaRest, Inc., and Wakely to provide the cost-benefit analysis required under Section 54-03-28. The Insurance Commissioner recommended, based on the proposals received, the Legislative Management contract with NovaRest to perform cost-benefit analyses of legislative measures to be considered by the 68<sup>th</sup> Legislative Assembly.

### **Recommendation**

The committee recommends the Legislative Council contract with NovaRest, Inc., for cost-benefit analyses of legislative measures to be considered by the 68<sup>th</sup> Legislative Assembly mandating health insurance coverage pursuant to Section 54-03-28.

# HIGHER EDUCATION COMMITTEE

The committee was delegated by the Legislative Management the responsibility to:

- Study higher education student affordability, including all forms of financial assistance available for students enrolled at institutions of higher education in the state, pursuant to Section 25 of Senate Bill No. 2003 (2021). The study must include a review of available scholarships, student loan programs, waivers, grants, and any other forms of student financial assistance available for students enrolled at institutions of higher education in the state. The study also must include a review of the eligibility requirements and other criteria relating to each program, and their impact on the financial cost and utilization of each program.
- Study the higher education funding formula, including instructional program classification factors, pursuant to Section 27 of Senate Bill No. 2003.
- Study the professional student exchange program, pursuant to Section 3 of Senate Bill No. 2140 (2021). The study must include the number of program participants enrolled in each discipline, the tuition support provided for students enrolled in each discipline, the rate at which students participating in the program return to the state, the procedures necessary to implement a payback provision and their associated costs, an appropriate grace period to allow program participants to return to the state, and the educational disciplines to which the payback provision should be applied.
- Receive annual reports from the State Board of Higher Education (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 (SMHS) 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 SBHE pursuant to Section 14 of Senate Bill No. 2003 regarding the use of funding in each institutions' capital building fund, the source of matching funds, and each institutions' 5-year plan for capital construction spending.
- Receive a report from SBHE pursuant to Section 22 of Senate Bill No. 2003 regarding the transfer of appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of Section 1 of Senate Bill 2003.

Committee members were Representatives Mark Sanford (Chairman), Larry Bellew, Jay Fischer, LaurieBeth Hager, Karla Rose Hanson, Zachary Ista, Dennis Johnson, Bob Martinson, Gary Paur, Brandy Pyle, David Richter, Mike Schatz, and Cynthia Schreiber-Beck and Senators JoNell A. Bakke, Robert Erbele, Karen K. Krebsbach, Dave Oehlke, and Jim P. Roers.

## 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 SBHE; business and industry; the executive branch; and higher education institutions, including tribal and private colleges. The committees have held meetings at the campuses of University System institutions. The 2021-22 interim Higher Education Committee toured Valley City State University (VCSU), Williston State College (WSC), North Dakota State University (NDSU), Bismarck State College (BSC), Minot State University (MiSU), Mayville State University (MaSU), and UND.

## University System Information

The University System consists of 11 higher education institutions under the control of 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 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 NDSU.

Legislative appropriations for the 2021-23 biennium for higher education institutions, Forest Service, and the University System office total \$2,820,974,686, of which \$703,353,526 is from the general fund. Of the total general fund appropriation amount, \$17,025,000 was considered one-time funding.

The University System reported fall 2021 total degree credit headcount enrollment of 43,384 students and a total degree credit full-time equivalent (FTE) enrollment of 33,496 students, compared to fall 2020 headcount enrollment of 44,001 students and FTE enrollment of 34,268 students.

### Legislative Appropriations

Legislative appropriations for the 2021-23 biennium for higher education institutions, Forest Service, and the University System office total \$2,820,974,686, of which \$703,353,526 is from the general fund. The following is a history of legislative appropriations for higher education since the 2003-05 biennium:

Biennium	General Fund	Special Funds	Total
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	\$2,400,897,468	\$3,061,415,273
2021-23	\$703,353,526	\$2,117,621,160	\$2,820,974,686

**NOTE:** The special funds amounts for the 2017-19 through 2021-23 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
2021-23	\$686,328,526	\$17,025,000	\$703,353,526

<sup>1</sup>The 2017-19 biennium one-time amount includes \$53.6 million of supplemental funding appropriated by the 2019 Legislative Assembly.

### STUDENT AFFORDABILITY STUDY

Pursuant to Section 25 of Senate Bill No. 2003, the committee studied higher education student affordability, including all forms of financial assistance available for students enrolled at institutions of higher education in the state. The Education Commission of the States, in a March 2016 report entitled *Redesigning State Financial Aid - Principles to Guide State Aid Policymaking*, stated financial aid programs should be:

- Student centered - Aid programs designed around students and their needs set students up for successful outcomes.
- Goal driven and data informed - Aid programs should have a clearly defined and easily understood intent aligned with measurable state education and workforce goals.
- Timely and flexible - Aid programs should provide financial support to students when it can have the greatest impact on enrollment and persistence decisions.
- Broadly inclusive of all students' educational pathways - Aid programs need to respond to the diverse enrollment options available to students.

### 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	Purpose	Approximate Number of Annual Recipients	Award Amount	2021-23 Biennium Appropriation
Student financial assistance grants	Needs-based grants awarded to students based on FAFSA information	Attract	6,000	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	Attract	110	Full amount of tuition	\$1,807,115
Academic and career and technical education scholarship program	Scholarships awarded to resident students who achieve certain academic or technical standards in high school	Attract	5,300	\$750 per semester	\$16,216,749
Indian scholarship program	Merit or needs-based scholarships awarded to students who are enrolled members of a federally recognized Indian tribe	Attract	280	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	Target	70	Varies by program	\$3,699,342
Dual-credit tuition scholarship	Funded using Bank of North Dakota profits, this program incentivizes completion of dual-credit courses in high school	Attract	New program	Maximum lifetime award of \$750	\$1,500,000
Career builders scholarship and loan repayment	Workforce development program funded through Bank of North Dakota profits and private sector matching funds	Attract Retain Target	New program	Maximum lifetime award of \$17,000	\$4,500,000
Tribal community college assistance grant	Issued to five North Dakota tribal colleges for enrolling resident nonbeneficiary students	Attract	80	The appropriation is distributed at a prorated amount to each tribal college	\$1,000,000

### Student Financial Assistance Grants

The Legislative Assembly provided \$23,917,306 from the general fund for student financial assistance grants. The maximum grant award amount under the program is \$1,100 per semester. To qualify, a student must be a resident undergraduate student who has graduated from a North Dakota high school and is attending a qualified postsecondary institution in North Dakota. The award of grants is based on student need. The committee reviewed the following summary of funding for student financial assistance grants:

Biennium	Maximum Annual Grant Award	Legislative Appropriations		
		General Funds	Federal Funds	Total
2003-05	\$600	\$2,730,2215	\$200,000	\$2,930,215
2005-07	\$1,000	\$3,332,402	\$172,000	\$3,504,402
2007-09	\$1,000	\$5,823,497	\$164,000	\$5,987,497
2009-11	\$1,500	\$19,025,594	\$348,428	\$19,374,022
2011-13	\$1,500	\$19,025,594	\$348,428	\$19,374,022
2013-15	\$1,650	\$21,245,679		\$21,245,679
2015-17	\$1,950	\$23,886,160		\$23,886,160
2017-19	\$1,950	\$21,917,306		\$21,917,306
2019-21	\$2,200	\$23,917,306		\$23,917,306
2021-23	\$2,200	\$23,917,306		\$23,917,306

### Scholars Program

The Legislative Assembly provided \$1,807,115 from the general fund for the scholars program. The scholars program provides full-tuition scholarships to resident students who score in the upper fifth percentile of North Dakota ACT Aspire test takers and enroll in an undergraduate program in the state. The committee reviewed the following summary of funding for the scholars program:

Biennium	General Fund
2003-05	\$816,386
2005-07	\$862,077
2007-09	\$1,478,566
2009-11	\$2,113,584
2011-13	\$2,113,584
2013-15	\$2,113,584
2015-17	\$2,113,584
2017-19	\$1,807,115
2019-21	\$1,807,115
2021-23	\$1,807,115

### Career and Technical Education 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, 2019, and 2021. The eligibility requirements provide a student must be a resident of the state and meet the following program requirements for the scholarships:

Career and Technical Education Scholarship	Academic Scholarship
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 1 unit of Algebra II, 1 unit of mathematics for which Algebra II is a prerequisite, and 1 unit of any other mathematics
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 0.5 unit of physical education and 0.5 unit of health	Complete 1 unit of physical education or 0.5 unit of physical education and 0.5 unit of health
Complete 2 units of a coordinated study plan as recommended by the Department of Career and Technical Education	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
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 0.5 unit required for the scholarship	Obtain a grade of at least "C" in each unit or 0.5 unit required for the scholarship
Receive a composite score of at least 24 on the ACT or a score of at least 5 on each of three WorkKeys assessments	Receive a composite score of at least 24 on the ACT
	Fulfill 1 unit required for the scholarship through an advanced placement course or fulfill 0.5 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 committee reviewed the following summary of funding for the CTE and academic scholarship programs:

Biennium	General Fund
2009-11	\$3,000,000
2011-13	\$10,000,000
2013-15	\$10,000,000
2015-17	\$13,134,096
2017-19	\$12,016,749
2019-21	\$12,016,749
2021-23	\$16,216,749

In addition to being considered under this study of student affordability, Section 15-10-59 requires 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.



The University System reported of the 8,081 high school seniors in the state who graduated in 2021, a total of 1,903, or 24 percent, qualified to receive an academic or CTE scholarship. Since the program began in 2010, there have been 95,598 high school graduates in the state and 19,884, or 21 percent, of those graduates were eligible to receive an academic or CTE scholarship. Of the 19,884 eligible students, 11,469 students qualified for an academic scholarship and 8,415 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 2021 semester.

### **Native American Scholarship Program**

The Legislative Assembly provided \$555,323 from the general fund for Native American scholarships. The committee reviewed the following summary of funding for the Native American scholarship program:

<b>Biennium</b>	<b>General Fund</b>
2003-05	\$204,086
2005-07	\$251,988
2007-09	\$380,626
2009-11	\$381,292
2011-13	\$574,267
2013-15	\$649,267
2015-17	\$649,267
2017-19	\$555,323
2019-21	\$555,323
2021-23	\$555,323

### **Professional Student Exchange Program**

The Legislative Assembly provided \$3,699,342 from the general fund for the professional student exchange program. The program assists North Dakota students enrolling in professional programs not offered in the state, including dentistry, optometry, and veterinary medicine. The Legislative Assembly also repealed statutory repayment provisions relating to the professional student exchange program. The committee reviewed the following summary of funding for the professional student exchange program:

<b>Biennium</b>	<b>General Fund</b>	<b>Student Loan Trust Fund</b>	<b>Total</b>
2003-05	\$1,678,300		\$1,678,300
2005-07	\$1,864,780	\$262,500	\$2,127,280
2007-09	\$2,199,566	\$523,380	\$2,722,946
2009-11	\$2,346,130	\$990,970	\$3,337,100
2011-13	\$2,856,131	\$465,307	\$3,321,438
2013-15	\$3,809,708	\$465,307	\$4,275,015
2015-17	\$3,476,447	\$465,307	\$3,941,754
2017-19	\$3,234,035	\$465,307	\$3,699,342
2019-21	\$3,699,342		\$3,699,342
2021-23	\$3,699,342		\$3,699,342

The professional student exchange program was further studied pursuant to Section 3 of Senate Bill No. 2140 (2021) and is addressed later in this report.

### **Dual-Credit Tuition Scholarship**

The 2021 Legislative Assembly approved House Bill No. 1375, codified as Section 15-10-38.4, to establish the dual-credit tuition scholarship program. The Legislative Assembly appropriated \$1.5 million from Bank of North Dakota profits to SBHE for the dual-credit tuition scholarships. Representatives of the University System reported the program provides an incentive at the collegiate level for taking dual-credit courses in high school. The committee was informed students enrolled at any post-secondary institution in North Dakota, including public, private, tribal, or proprietary institutions, may be eligible for the dual-credit tuition scholarship if the student completed a dual-credit course and graduated from high school.

### **Skilled Workforce Student Loan Repayment and Scholarship Programs**

The 2019 Legislative Assembly enacted legislation, codified as Sections 15-10-38.1, 15-10-38.2, and 15-10-38.3, to create the skilled workforce student loan repayment and scholarship programs. The programs were created to assist businesses in attracting and retaining talent in high-demand and emerging occupations. Known collectively as the career builders programs, the workforce development programs have two components--scholarships for students enrolled in qualifying programs and student loan repayment for employees in the state who graduated from qualifying programs. The 2021 Legislative Assembly transferred \$4.5 million from Bank of North Dakota profits to the special funds created for the career builders programs.

In addition to being considered under this study of student affordability, Sections 15-10-38.1 and 15-10-38.2 require SBHE to provide a biennial program report to the Legislative Management by September 1 of each even-numbered year.

Representatives of the University System reported:

- The career builders scholarship and loan repayment programs target in-demand occupations identified by the North Dakota Workforce Development Council, including occupations in education, engineering and architecture, information technology, health care, transportation, and skilled trades;
- Career builders scholarships were awarded to 160 applicants, with an average award of \$6,187;
- A total of \$989,941 in scholarships has been committed through the program;
- Matching funds for the scholarships were received from 66 donors;
- 104 scholarship recipients graduated and are working in the state, 40 are active in the program, and 16 defaulted;
- Career builders loan repayment was awarded to 55 applicants, with an average award of \$14,262;
- A total of \$784,404 in loan repayments has been committed through the program;
- Matching funds for the loan repayments were received from 17 donors; and
- 48 loan repayment recipients remain employed, 2 are paid in full, and 5 did not continue employment.

### 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 SBHE, which documents the enrollment status of each student for whom financial assistance is sought. If an application is approved, SBHE is to distribute an annual payment to the institution for each nonbeneficiary student enrolled at the institution. The amount of payment is to be 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.

In addition to being considered under this study of student affordability, 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		
2021-23	\$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 \$6,046 of grant funding was awarded per FTE nonbeneficiary student during the 2021-22 academic year. The committee reviewed the following schedule detailing the allocation of grant funding during the 2021-22 academic year:

Tribal College Assistance Grants - 2021-22 Academic Year			
Institution	Headcount of Nonbeneficiary Students	FTE Enrollment of Nonbeneficiary Students	Grant Funds Provided
Cankdeska Cikana Community College	27	18.7	\$113,059
Fort Berthold Community College	24	15.9	96,131
Sitting Bull College	13	7.3	44,135
Turtle Mountain Community College	11	10.8	\$65,296
United Tribes Technical College	33	30	181,379
Total	108	82.7	\$500,000

## Higher Education Challenge Grants 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 2021 Legislative Assembly provided \$11.15 million from the general fund for higher education challenge grants, \$1.50 million more than the 2019-21 biennium appropriation of \$9.65 million. The 2021 Legislative Assembly made statutory changes to allow UND SMHS to participate in the program. The 2021 Legislative Assembly also added abortion-related restrictions to the program's eligibility requirements. The committee reviewed the following summary of funding for the higher education challenge grants program:

Biennium	General Fund	Student Loan Trust Fund	Total
2013-15	\$29,000,000		\$29,000,000
2015-17	\$21,000,000	\$2,500,000	\$23,500,000
2017-19	\$2,000,000		\$2,000,000
2019-21	\$9,650,000		\$9,650,000
2021-23	\$11,150,000		\$11,150,000

Of the funding appropriated, \$1.70 million each was designated to be available to UND and NDSU; \$1.50 million was designated to be available to UND SMHS; \$950,000 each was designated to be available to BSC, MiSU, and the North Dakota State College of Science; \$700,000 each was designated to be available to DSU, MaSU, 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 \$11.15 million available for higher education challenge grants, approximately \$9.5 million had been awarded through June 2022. The University System reported approximately 60 percent of all funding awarded to campuses since the inception of the higher education challenge grant program has been for student scholarships.

## Other Student Financial Assistance

Representatives of the Bank of North Dakota reported that in addition to providing funding for the dual-credit tuition scholarship program and the career builders scholarship and loan repayment program, the Bank also:

- Issues and refines private student loans - The Bank's student loan portfolio is \$1.1 billion, including over 45,000 borrowers with an average loan amount of \$25,600.
- Provides low-income dual-credit assistance - The Bank provides dual-credit assistance to students who qualify for free or reduced lunch, including 459 students enrolled in 798 classes in 2021.
- Administers College SAVE 529 savings plans - The Bank administers nearly 40,000 College SAVE plans, with net assets of over \$280 million.

The committee was informed other forms of student financial assistance in the state include the following:

Program	Approximate Annual Amount
Institutional and private scholarships	\$49,200,000
Tuition waivers	\$31,100,000
Health care professional student loan repayment program	\$550,173
Federal/state loan repayment program	\$540,000
Dental loan repayment program	\$270,000
Veterinarian loan repayment program	\$240,000
Federal Pell Grant and Supplemental Educational Opportunity Grant	\$37,000,000
Federal Work Study	\$2,100,000
Federal subsidized and unsubsidized student loans - Undergraduate only	\$106,900,000
Federal parent PLUS loans - Undergraduate only	\$8,400,000

## Teacher Shortage

Representatives of the Department of Public Instruction (DPI) reported the teacher shortage is a pervasive problem affecting all states. They also reported:

- The teacher shortage loan forgiveness program was transferred from the University System office to DPI in 2019, and the goal of the program is to repay loans for teachers in moderate to extreme rural areas and those who work in a shortage field.
- 269 teachers originally qualified and received loan forgiveness payments totaling \$2 million.
- The teacher shortage loan forgiveness program increased 1-year teacher retention in general, but the 2- and 3-year retention benefits were most evident among more experienced teachers.
- The teacher shortage loan forgiveness program was discontinued on June 30, 2022.

- DPI used federal Elementary and Secondary School Emergency Relief (ESSER) funds to establish a teacher shortage grants program and a teacher apprenticeship initiative to help address the teacher shortage.
- The teacher shortage grants program provides scholarships to school paraprofessionals enrolled in teacher education programs.
- DPI is working to establish North Dakota teacher apprenticeships as eligible for federal apprenticeship funding.
- The available ESSER funding will be used by September 2024.

### **Student Financial Assistance Programs in Other States**

Representatives of the Midwestern Higher Education Compact (MHEC) and the Western Interstate Commission for Higher Education (WICHE) provided the committee with information regarding student financial assistance in other states. The Midwestern Higher Education Compact reported North Dakota provides the second highest average merit-based grant aid in the Midwest, but its needs-based grant aid was less than the regional average. The Midwestern Higher Education Compact also reported the average net price, the total cost of attendance minus grant aid, was higher in North Dakota than the regional average. Student financial assistance is typically intended to attract, retain, or target individuals for enrollment or workforce. The Western Interstate Commission for Higher Education and MHEC reported the following unique or new student recruitment and financial assistance programs in other states:

- **Attract - Program enrollment**

Indiana - You Can Go Back campaign - Encourages adults who have earned college credits but no degree to re-enroll in college and complete their credential. The effort includes direct outreach with adult students, an assessment of institutional practices that support returning adults, and employer engagement.

Minnesota - U Promise Scholarship program - Provides awards of \$300 to \$4,000 of needs-based aid per year to students from families earning no more than \$120,000 per year.

Minnesota - Direct admissions program - Grants high school seniors prequalified admission to Minnesota State colleges and universities.

Wisconsin - Text Steps program - Encourages college-accepted individuals via text message to complete their final steps toward entering college.

- **Retain - Program retention and completion**

South Dakota - Critical Teaching Needs Scholarship - Provides a scholarship for teacher education students in the final 2 years of the program. Students must commit to teaching in a critical area for 5 years. Recipients who do not meet the requirements will have their scholarship converted to a loan.

Utah - Adult Learner Grant Program - Needs-based grant for students 26 years of age or older and enrolled in an online program in a field designed to meet industry needs, as established by the Department of Workforce Services.

- **Target - Workforce entry and retention**

Indiana - Next Level Jobs program - Provides adults with tuition-free job training toward certificates in high-demand areas.

Iowa - Teach Iowa Scholar program - Loan forgiveness program that awards Iowa teachers who teach at schools in designated shortage areas up to \$4,000 per year toward paying their student loans.

### **Committee Recommendations**

The committee recommends:

- A bill draft [\[23.0134.01000\]](#) to provide for financial aid program technical corrections. The bill draft:
  - Continues the skilled workforce student loan repayment and scholarship programs;
  - Clarifies eligibility and the award amount for the dual-credit scholarship;
  - Clarifies eligibility for the scholars program;
  - Renames the Indian scholarship to the Native American scholarship; and
  - Provides for the University System office to continue to administer the academic and CTE scholarship program for current award recipients.
- A bill draft [\[23.0152.01000\]](#) regarding needs-based student financial assistance grants, the academic and CTE scholarship, and the dual-credit tuition scholarship. The bill draft:

Increases the annual needs-based student financial assistance grant award from \$2,200 to \$3,300 per year;

Provides \$12.0 million in additional funding for a total of \$35.9 million from the general fund for student financial assistance grants to support the increased award;

Provides \$1.0 million in additional funding for a total of \$17.2 million from the general fund for academic and CTE scholarships to meet estimated program needs for the 2023-25 biennium; and

Provides \$1.5 million from the Bank of North Dakota to continue the dual-credit tuition scholarship program.

- A bill draft [\[23.0158.01000\]](#) to provide financial aid targeted to students enrolled in certificate programs in high-need areas. The bill draft includes an appropriation of \$1 million from the general fund to establish a \$500 scholarship for residents of the state enrolled in educational programs for commercial driver's license and certified nursing assistant certificates.
- A bill draft [\[23.0159.01000\]](#) to provide financial aid targeted to paraprofessionals enrolled in a teacher education program. The bill draft includes an appropriation of \$3 million from the general fund to DPI to provide grants to accredited institutions of higher education to assist paraprofessionals to become qualified teachers.
- A bill draft [\[23.0155.01000\]](#) to reinstate the teacher shortage loan forgiveness program. The bill draft:
  - Reinstates the teacher shortage loan forgiveness program under DPI with no limit on the number of teachers from each school district who would be eligible; and
  - Includes an appropriation of \$3 million from the general fund and would provide a maximum annual award of \$5,000 for a maximum of 4 years.
- A bill draft [\[23.0156.01000\]](#) to continue the higher education challenge grant program. The bill draft:
  - Appropriates \$24.00 million for the higher education challenge grant program for the 2023-25 biennium, an increase from the \$11.15 million appropriated for the 2021-23 biennium; and
  - Expands the allowable uses of challenge grant funds to include endowed faculty and costs related to new or expanding educational programs.

## HIGHER EDUCATION FUNDING FORMULA STUDY

Pursuant to Section 27 of Senate Bill No. 2003 (2021), the 2021-22 interim Higher Education Committee studied the higher education funding formula, including instructional program classification factors.

### Adjusted Student Credit-Hour Funding Method

Senate Bill No. 2200 (2013), codified as Chapter 15-18.1, 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 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 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.

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:

Institution	Biennial Base Rate Per Credit-Hour		
	2017-19	2019-21	2021-23
North Dakota State University, University of North Dakota	\$58.65	\$60.87	\$61.81
Dickinson State University, Mayville State University, Minot State University, Valley City State University	\$86.95	\$90.98	\$92.60
Bismarck State College, Dakota College at Bottineau, Lake Region State College, North Dakota State College of Science, Williston State College	\$93.03	\$97.06	\$98.84

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 2021-23 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.

### Minimum Amount Payable

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. Representatives of the University System suggested the Legislative Assembly consider reinstating the 96 percent minimum amount payable clause in the higher education funding formula.

### Preliminary 2023-25 Biennium Funding Formula Calculations

The committee was informed the 2023-25 biennium higher education funding formula calculations will be based on student credit-hours completed during the 2019-21 biennium. The preliminary calculations for the 2023-25 biennium based on current law indicate 7,601,165 adjusted student credit-hours were completed at institutions during the 2019-21 biennium. This represents a decrease of 175,107, or 2.2 percent, in completed adjusted student credit-hours from the 2017-19 biennium.

Representatives of the University System reported the following preliminary funding formula calculations based on current law for the 2023-25 biennium:

Institution	2021-23 Biennium Base Funding	2023-25 Biennium Preliminary Funding Formula Calculation	Increase (Decrease)	
Bismarck State College	\$32,084,055	\$31,223,842	(\$860,213)	(2.7%)
Dakota College at Bottineau	9,537,862	9,966,630	428,768	4.5%
Lake Region State College	14,242,152	13,084,439	(1,157,713)	(8.1%)
North Dakota State College of Science	35,714,792	31,394,055	(4,320,737)	(12.1%)
Williston State College	11,286,737	11,424,224	137,487	1.2%
Dickinson State University	20,242,730	21,241,607	998,877	4.9%
Mayville State University	18,679,828	19,364,975	685,147	3.7%
Minot State University	41,206,630	39,003,398	(2,203,232)	(5.3%)
Valley City State University	24,161,377	24,642,249	480,872	2.0%
North Dakota State University	138,431,325	130,839,593	(7,591,732)	(5.5%)
University of North Dakota	208,373,934	208,619,443	245,509	0.1%
Total	\$553,961,422	\$540,804,455	(\$13,156,967)	(2.4%)

### Committee Recommendation

The committee recommends the 2023 Legislative Assembly reinstate the minimum amount payable portion of the higher education funding formula.

### PROFESSIONAL STUDENT EXCHANGE PROGRAM STUDY

Pursuant to Section 3 of Senate Bill No. 2140 (2021), the committee studied the professional student exchange program (PSEP), including:

- The number of program participants enrolled in each discipline;
- The tuition support provided for students enrolled in each discipline;
- The rate at which students participating in the program return to the state;
- The procedures necessary to implement a payback provision and their associated costs;
- An appropriate grace period to allow program participants to return to the state; and
- The educational disciplines to which the payback provision should be applied.

The Legislative Assembly provided \$3,699,342 from the general fund for PSEP for the 2021-23 biennium. The program assists North Dakota students enrolling in professional programs not offered in the state, including dentistry, optometry, and veterinary medicine.

## Professional Student Exchange Program Repayment Provision

The 2017-18 interim Higher Education Committee considered but did not recommend a bill draft to replace PSEP with a dentistry, optometry, and veterinary medicine student loan repayment program. The bill draft would have required students in professional programs in other states to return to North Dakota to receive student loan repayment funding. House Bill No. 1003 (2019) established a PSEP repayment provision requiring dentistry, optometry, and veterinary medicine students to repay the state if they don't return to and work in the state for 3 years. Senate Bill No. 2140 (2021) repealed the repayment provision and provided for this study.

Representatives of the WICHE reported North Dakota paid approximately \$1.1 million for 47 students enrolled in PSEP through WICHE, including 16 in dentistry, 25 in optometry, and 6 in veterinary medicine. They reported North Dakota's PSEP return rate for graduates between 2007 and 2017 was 37 percent, but the return rate for states with a return requirement ranged from 65 percent for Hawaii to 95 percent for New Mexico. They reported states with a hybrid service requirement, Wyoming and Montana, had return rates of 42 percent and 55 percent, respectively.

## Committee Consideration

The committee considered but did not recommend a bill draft to reinstate the repayment provision for the professional student exchange program.

## UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES ADVISORY COUNCIL

The University of North Dakota 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 of the advisory council are selected by the Department of Health and Human Services, SBHE, 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.

Section 15-52-04 requires the UND SMHS Advisory Council to provide a biennial report to the Legislative Management. 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.

## Report

The committee received a report from representatives of the UND SMHS Advisory Council regarding the strategic plan, programs, and facilities of the school. Representatives of the UND SMHS Advisory Council reported UND SMHS has doubled its research grants and contracts over the past decade, with funding primarily from federal funds. They noted the availability of lab space is becoming an issue due to the increase in research. They reported UND SMHS is working to create a more diverse and inclusive workforce with recruitment of Native American students and students from rural areas.

## CAPITAL BUILDING FUND PROGRAM

The Legislative Assembly established a capital building fund program for the 2019-21 biennium in Sections 29 and 30 of House Bill No. 1003 (2019), including one-time appropriations of \$17 million from Bank of North Dakota profits and \$2 million from the general fund which were to be matched by other institutional funds as follows:

Institution	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 North Dakota 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 was considered Tier I of the capital building fund program.

The Legislative Assembly continued the capital building fund program for the 2021-23 biennium in Sections 6, 7, and 14 of Senate Bill No. 2003 (2021), including a transfer of \$19 million from the strategic investment and improvements fund (SIIF) to the University System capital building fund. The allocations by school remained the same as for the 2019-21 biennium and continuing appropriation authority was established to spend from the fund in Section 15-54.1-01. Section 15-54.1-02 provides for SBHE to report to the Legislative Management regarding the use of funding in the University System capital building fund, the source of matching funds, and each institutions' 5-year plan for capital construction spending.

### **Report**

The University System reported state funds totaling \$918,894 in Tier II and \$2,415,945 in Tier III of the capital building fund program were continued from the 2019-21 biennium into the 2021-23 biennium. The University System reported DSU, MiSU, and DCB, expected as of February 2022, to utilize all carryover funds during the 2021-23 biennium. The University System reported MaSU did not expect to utilize any of the state funding carried over in Tier II (\$240,029) or Tier III (\$500,000), and VCSU did not expect to utilize any of the state funding carried over in Tier III (\$415,945) during the 2021-23 biennium.

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, \$28.7 million, or 86 percent, had been allocated for projects as of February 2022. The University System reported BSC, UND, NDSU, MiSU, and DCB had fully allocated their Tier I funds; WSC and VCSU had not allocated any funding for extraordinary repairs projects; and the four other institutions had partially allocated their Tier I funds for projects.

The University System reported of the \$20 million available for Tier II of the capital building fund program, including \$10 million from SIIF and \$10 million from institution matching funds, \$17.3 million, or 86 percent, had been allocated for projects as of February 2022. The University System reported BSC, UND, NDSU, DSU, MiSU, and DCB had fully allocated their Tier II funds and the other five institutions had not allocated any Tier II funds for projects as of February 2022.

The University System reported of the \$27 million available for Tier III of the capital building fund program, including \$9 million from SIIF and \$18 million from institution matching funds, \$19.5 million, or 72 percent, had been allocated for projects as of February 2022. The University System reported BSC, UND, NDSU, DSU, MiSU, and DCB had fully allocated their Tier III funds and the other five institutions had not allocated any Tier III funds for projects as of February 2022.

### **Committee Recommendation**

The committee recommends a bill draft [23.0132.01000] regarding the capital building fund program. The bill draft:

- Reduces the Tier I matching requirements to \$1-\$1 for the nine non-research University System institutions;
- Doubles funding for Tier II of the capital building fund program from \$10 million to \$20 million from SIIF;
- Restricts the use of Tier II and Tier III funding to extraordinary repairs and deferred maintenance projects for academic facilities, unless legislatively approved; and
- Requires institutions to identify matching funds for future capital project requests submitted during the budget process.

### **TRANSFERS BETWEEN LINE ITEMS**

The Legislative Assembly approved Section 22 of Senate Bill No. 2003 to allow for the transfer of appropriation authority from the operations line item to the capital assets line item within subdivisions 2 through 14 of Section 1 of Senate Bill No. 2003. The State Board of Higher Education is required to report to the Legislative Management regarding any line item transfers made pursuant to the section. The Higher Education Committee was assigned to receive this report.



### **Report**

The University System reported VCSU transferred \$816,638 of appropriation authority from the operations line item to the capital assets line item for extraordinary repairs matching funds, pursuant to Section 22 of Senate Bill No. 2003. The transfer was made to provide matching funds required under Section 9 of Senate Bill No. 2003, which requires institutions to provide \$2 of matching funds from operations or other sources for each \$1 of appropriated extraordinary repairs funding used for a project.

# HUMAN SERVICES COMMITTEE

The Human Services Committee was assigned the following studies:

- Section 25 of Senate Bill No. 2086 (2021) directed a study of issues related to the Department of Human Services (DHS) and human service zones employee compensation and benefits.
- Section 1 of Senate Bill No. 2256 (2021) directed a study of state and federal laws and regulations and services relating to the care and treatment of individuals with developmental disabilities and individuals with autism spectrum disorder (ASD).
- House Concurrent Resolution 3013 (2021) directed a study of issues relating to employment restrictions in public assistance programs.

The Legislative Management delegated to the committee the responsibility to:

- Receive annual reports from the ASD Task Force (North Dakota Century Code Section 50-06-32).
- Receive a report from the Department of Health and Human Services (DHHS) regarding the ASD program pilot project (Section 50-06-32.1).
- Receive a report from DHHS 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 DHHS 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 DHHS 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 DHHS describing enrollment statistics and costs associated with the children's health insurance program state plan (Section 50-29-02).
- Receive reports from DHHS regarding human service zone employment and indirect costs (Section 50-35-02).
- Receive a report from DHHS regarding refugee resettlement services (Section 20 of House Bill No. 1012 (2021)).
- Receive a report from DHHS before October 1, 2022, regarding the early and periodic screening, diagnostic, and treatment program study conducted by the department (Section 59 of House Bill No. 1012).
- Receive a report from DHHS before October 1, 2022, regarding a revised payment methodology for basic care facilities (Section 60 of House Bill No. 1012).
- Receive a report from DHHS regarding the status of 4-year old program approvals, the Early Childhood Education Council, and the early childhood grant for best in class 4-year old experiences (Section 61 of House Bill No. 1012).
- Receive reports from the State Health Officer, the Executive Director of DHS, and then the Executive Director of DHHS regarding the merger of the State Department of Health and DHS (Section 511 of House Bill No. 1247 (2021)).
- Receive a report from DHHS regarding the department's Medicaid program quality strategy (Section 1 of Senate Bill No. 2135 (2021)).

Committee members were Senators Judy Lee (Chairman), Howard C. Anderson, Jr., JoNell A. Bakke, Jason G. Heitkamp, Kathy Hogan, and David Hogue and Representatives Gretchen Dobervich, Clayton Fegley, Dwight Kiefert, Alisa Mitskog, Karen M. Rohr, Matthew Ruby, Mark Sanford, Mary Schneider, Randy A. Schobinger, Kathy Skroch, Michelle Strinden, and Greg Westlind.

## STUDY OF DEPARTMENT OF HUMAN SERVICES AND HUMAN SERVICE ZONE EMPLOYEE COMPENSATION

Section 25 of Senate Bill No. 2086 (2021) directed a study of issues related to DHS and human service zones employee compensation. The study was to include consideration of total state employee and human service zone team members compensation, including wages and salaries, annual leave, pay grades, classification, disaster or emergency services volunteers' leave, employee assistance program benefits, family and medical leave, funeral leave, holidays, hours of work, administrative leave, jury and witness leave, leave without pay, the merit system, military leave, overtime compensation, retirement benefits, health insurance benefits, severance pay, sick leave, benefits for temporary employees, and time off to vote; health insurance benefits, including the availability of health

savings accounts, self-insurance, healthy lifestyle incentives, and the appropriateness of the human service zones' current health insurance benefits; compensation equity between DHS, other state agencies, human service zones, and the market; within human service zones; within DHS; and between human service zones; and the feasibility and desirability of implementing compensation equity.

### **Previous Studies and Report**

The Legislative Management assigned the 2019-20 interim Human Services Committee the duty to receive updates regarding the county social and human services project. Representatives from the North Dakota Association of Counties reported one major issue affecting human service zones is the employee benefit packages offered by various counties. Benefit packages vary by county and zone employee benefits are administered by the host county. This would affect an employee's benefit coverage level as well as how much counties pay for employee benefits.

### **Human Service Zones**

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. This provision was amended by Senate Bill No. 2086 (2021) to provide only one commissioner from each county may serve on the board in multicounty zones and two commissioners must serve on the board in single county zones.
- 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 (FTE) positions may be transferred from counties to DHHS 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 positions may be transferred from counties to DHHS for specific positions that provide services to the zones.

### **Development of Zones**

The counties collaborated to create 19 human service zones effective January 1, 2020. Zone directors were hired by March 31, 2020, and zones developed operations plans by June 1, 2020.

### **Transfer of FTE Positions to State Employment**

Senate Bill No. 2124 (2019) authorized the transfer of 140 FTE positions from county employment to state employment. In addition, the 2021 Legislative Assembly authorized 3 additional FTE positions to provide for a total of 143 FTE state employee positions for the county social and human services project during the 2021-23 biennium. The positions relate to home- and community-based services case management (67), early childhood services (27), long-term care eligibility (16), foster care and adoption (16), child welfare quality control (10), and administration of zone activities (7). During the November 2021 special legislative session, an additional 16 FTE positions for foster care licensing were transferred from human service zones to state employment.

Senate Bill No. 2086 (2021) provides for DHHS, in conjunction with the North Dakota Association of Counties and human service zone directors, to develop a process for allowing a human service zone to opt for state employment. The process must identify under what conditions and factors a transition to state employment may or may not be desirable for a human service zone and the department; outline the governance process for choosing to opt in to state employment, including a description of the role of the human service zone board, county commissions, and the department; and include a template and potential timeline for any zone choosing to make the transition to state employment. The Legislative Assembly must authorize any transfer of positions from human service zones to state employment.

### **Budget and Employee Compensation Adjustments**

The county social and human services project provides for state funding to be distributed to human service zones for the delivery of human services programs previously paid through county property tax levies. The schedule below provides a comparison of funding for the county social and human services project for the 2021-23 biennium compared to the 2019-21 biennium.

	2019-21 Biennium	2021-23 Biennium	Increase (Decrease)
General fund		\$1,240,391	\$1,240,391
Other funds	\$173,700,000	188,676,995	14,976,995
Total	\$173,700,000	\$189,917,386	\$16,217,386
FTE positions	140.00	143.00	3.00

For the 2019-21 biennium, funding of \$2.9 million was appropriated to provide zone employees with salary increases consistent with state employees. Additionally, \$2.9 million was provided for zone employee equity adjustments. For the 2021-23 biennium, funding of \$3.8 million was appropriated to provide zone employees with salary increases consistent with state employees.

### State Employee Benefits

State employees receive the following benefits:

- Paid family health insurance premium or contributions to a health savings account if participating in an optional high-deductible health plan. The state contributes \$88.34 each month for an individual health plan and \$213.76 per month for a family plan to a health savings account for an employee enrolled in the high-deductible plan.
- Life insurance - \$1,300 coverage.
- Deferred compensation.
- Flexcomp plan.
- Retirement plan.
- Annual leave.
- Sick leave.
- Family and medical leave.
- 10 paid holidays per year.
- Leave sharing.
- Funeral leave.
- Military leave.
- Voluntary group insurance plans, including vision, dental, and long-term care paid for by the employee.

### Testimony Received and Committee Considerations

The committee received the following information from a representative of the Human Resource Management Services division of the Office of Management and Budget (OMB) regarding the state employee compensation system:

- The state classification system is defined by job title, classification description, and grade level.
- Salary ranges are established for each grade level.
- There are 97 classifications in 16 job families distributed among 10 pay grade levels.

Representatives of DHHS reported the following regarding human service zone employee compensation:

- Employee positions at DHHS and human service zones were reviewed and placed into 7 grades under 10 job codes. An average salary and compensation ratio was developed within each human service zone and the department. Compensation ratios at human service zones ranged from 74 to 128 percent compared to the overall salary levels.
- DHHS is obtaining consulting services to provide for a comprehensive compensation and equity study for DHHS and human service zones. The results of the study will be available for consideration by the Legislative Assembly during the 2023 legislative session.

### Committee Recommendations

The committee makes no recommendations regarding the study of DHS and human service zone employee compensation.

## **STUDY OF DEVELOPMENTAL DISABILITIES SERVICES AND AUTISM SPECTRUM DISORDER PROGRAMS**

Section 1 of Senate Bill No. 2256 (2021) directed a Legislative Management study of state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities and individuals with ASD. The study was to include a review of the following:

- The state's existing programs to identify potential pathways for individuals who have a developmental disability and individuals who have an ASD but do not meet the eligibility criteria for existing programs;
- Gap identification with programmatic recommendations identifying potential strategies to address the gaps, and potential federal and state funding sources, including the federal Medicaid 1915(i) state plan amendment;
- Efforts and services offered by other states, including the planning and implementation process for any new or modified programs;
- The impact of implementation and expanding of programs to address service gaps, including the number of individuals impacted, cost, and timeline for implementation; and
- The elimination of the ASD Task Force, including contracting with a private, nonprofit entity that does not provide ASD services to facilitate and provide support services to the ASD Task Force.

As part of the study, the Legislative Management was to contract with a third party to assist in the study.

### **Overview of Key Statutes Regarding Developmental Disabilities**

Section 25-01.2-01 defines "developmental disability" as a severe, chronic disability of an individual which:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome;
- Is manifested before the individual attains age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in three or more of the following areas of major life activity:
  - Self-care;
  - Receptive and expressive language;
  - Learning;
  - Mobility;
  - Self-direction;
  - Capacity for independent living; and
  - Economic sufficiency; and
- Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Section 25-04-01 provides for DHHS to administer and control the Life Skills and Transition Center in Grafton for individuals with developmental disabilities. Section 25-04-02 provides the purpose of the center is to:

- Maintain the relief, instruction, care, and custody of individuals with developmental disabilities or other individuals who may benefit from the services offered at the center; and
- Provide onsite and offsite additional services and effectuate its powers and duties to best serve individuals with developmental disabilities and other individuals who may benefit from those activities.

Section 50-06-01.4 provides for the structure of DHHS to include the State Hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the Executive Director determines necessary. Furthermore, DHHS must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of functions not otherwise by law made the responsibility of another state agency, including among others, administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.

## **Overview of Services Within the Department of Health and Human Services**

### **Developmental Disabilities Division**

- Administers the delivery of services for eligible individuals with an intellectual or developmental disability.
- Provides services including residential and day supports, employment, family support, self-directed, corporate guardianship, infant development, and personal care services.
- Collaborates with regional human service centers, the Life Skills and Transition Center, federal agency representatives, school system personnel, university representatives, consumer advocates, families, and public and private organizations within the delivery system and monitoring of services.

### **Regional Human Service Centers**

- Provide developmental disabilities services, including case management, day supports, and extended services.

### **Life Skills and Transition Center**

- Provides residential, vocational, and outreach services for individuals with developmental and intellectual disabilities. Residential services include 24-hour comprehensive medical and clinical programming services and supports, including services for individuals requiring skilled nursing and behavioral health services and youth transitioning from the facility to a community setting. Vocational services include the Work Activity Program, which provides services for individuals at vocational worksites on campus and in the community. Outreach services include independent supported living arrangements, clinical assistance resources and evaluation services (CARES), CARES clinical services, and developmental disabilities behavioral health services.

### **Overview of the United States Supreme Court *Olmstead v. L.C.* Case**

*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 Appeals. 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.

In November 2015, the federal Department of Justice began an investigation to determine if North Dakota was in compliance with Title II of the ADA. In December 2020, the state entered a prelawsuit settlement agreement with the Department of Justice to address services provided to individuals with a disability. The agreement provides for the state to provide additional home- and community-based services to reduce the need for adults with disabilities to reside in a nursing facility.

### **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 DHHS, 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 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 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 is to provide an annual report to the Governor and the Legislative Council regarding the status of the state ASD plan.

### **Autism Spectrum Disorder Voucher Program Pilot Project**

House Bill No. 1038 (2013), codified as Section 50-06-32.1, required DHHS 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 a sunset clause for the section to expire on June 30, 2015. However, Section 13 of Senate Bill No. 2012 (2015) provided for the continuation of Section 50-06-32.1 without a sunset clause.

Section 3 of Senate Bill No. 2089 (2021) provides legislative intent that DHHS adopt rules to seek additional flexibility for the administration of the ASD voucher program to ensure families can be served within available appropriations for the program. The administrative rules changes should consider changes that include reducing the amount of approved voucher funds available to each household and the amount of time during which a household may use approved voucher funds.

### **Medicaid Autism Spectrum Disorder Waiver**

The Medicaid ASD waiver is used to help families care for children with ASD at home instead of placing the child in a facility to receive care. To be eligible to receive the waiver, a child must be under the age of 14, be eligible to receive care in an intermediate care facility, be diagnosed with ASD, live in their parent's or legal guardian's home, and meet financial eligibility requirements. Services provided through the waiver program include service management, respite care, and assistive technology.

### **Funding**

The Legislative Assembly appropriated \$716,300,000, of which \$331,300,00 is from the general fund, for the Developmental Disabilities Division of DHHS for the 2021-23 biennium. In addition, the Legislative Assembly appropriated \$49,400,000, of which \$22,300,000 is from the general fund, for the Life Skills and Transition Center, and appropriated \$2,255,530, of which \$1,050,204 is from the general fund, for ASD services for the 2021-23 biennium.

### **Consultant Recommendations**

The committee, with the Legislative Management Chairman approval, entered a consulting agreement with Alvarez & Marsal Holdings, LLC, to assist in the study of the state's developmental disabilities services and ASD programs utilizing the following direction:

- Gather information from key individuals within DHHS, including staff responsible for the administration of developmental disabilities programs and staff responsible for key functions in the programs.
- Gather information from other key stakeholders, including legislators, representatives of organizations that advocate for developmental disabilities services, members of the ASD Task Force, members of other task forces and councils that relate to developmental disabilities, and self-advocates and families of individuals receiving developmental disability or ASD services.
- Gather and analyze data from DHHS regarding waiver applications, budget information, needs assessments, program and service access, assessment tools, eligibility determinations, and program utilization.
- Research other states to compare program services in peer states and to review planning and implementation approaches in other states.

The consultant's final report noted the state uses the following Medicaid waivers to provide home- and community-based services to individuals with a disability:

Waiver	Target Population	Eligible Ages
Intellectual/developmental disability	Individuals with an intellectual or developmental disability	All ages
ASD	Children with an ASD	0-15
Medically fragile	Children who require medications, treatments, and other specialized care due to illness or cognitive disorders	3-17
Children's hospice	Children in need of palliative care	0-21
1915(i)	People with listed behavioral health conditions	All ages

The report noted the following items regarding the current status of providing developmental disabilities services:

- The state is providing a wide array of services to children under age 3 in a cost-effective manner.
- The level of care provided to children decreases after age 3.
- There are waiting lists to receive services under the ASD waiver and medically fragile waiver.

The report recommended making the following adjustments to selected waiver programs:

Waiver	Proposed Changes
Intellectual/developmental disability	<ul style="list-style-type: none"> <li>• Modernize the level of care to allow the state to better serve individuals; and</li> <li>• Target services for high-needs and complex children and adults with intellectual disabilities, development disabilities, and/or ASD.</li> </ul>
ASD and medically fragile waivers	<ul style="list-style-type: none"> <li>• Combine waivers to create a cross disability individual family support waiver;</li> <li>• Target population would include children ages 3-18 with mild to moderate support needs (children ages 0-3 and children ages 3-18 with higher support needs would be served under the intellectual/developmental disability waiver);</li> <li>• Create a new level of care for children ages 3-5;</li> <li>• Use family navigators to support person-centered planning; and</li> <li>• Service array would include cost-effective community interventions that support children with disabilities and their families.</li> </ul>

The report noted the proposed changes will result in additional costs to the state. Options to reduce costs include limiting the number of individuals who may receive a waiver, limiting the amount of funding that can be utilized by an individual, and limiting the array of services provided.

The report provided the following recommendations regarding the ASD waiver program and the ASD voucher program:

- Add sufficient slots to the ASD waiver program to ensure there is no wait list to receive services through the program.
- Require all current and future ASD voucher program recipients and applicants to apply for services through the ASD waiver program. Allow an individual to apply for the ASD voucher program only if denied admission to the ASD waiver program.
- Align the services provided under the waiver and voucher programs.
- Create a cross-disability advisory committee with a majority of members having a disability or having a family member with a disability. Membership should be diverse to gather input from individuals, including those with an ASD, an intellectual disability, or developmental disabilities.

### Department of Health and Human Services Response to Consultant Recommendations

A representative of DHHS provided the following response regarding the results of the study conducted by Alvarez & Marsal Holdings, LLC, of the state's developmental disabilities system and ASD programs:



<b>Recommendation</b>	<b>DHHS Response Summary</b>
Modernize the home- and community-based services Medicaid waiver.	The department supports the concept of modernizing the home- and community-based Medicaid waiver. However, making changes to the waiver would be a multiyear project requiring funding and FTE positions.
Examine caseload ratios for home- and community-based services case managers to determine if staff levels are sufficient and utilize family navigators rather than case managers if available.	The department agrees in concept with using family navigators. However, there are factors to consider, such as federal approvals, when using nonstate employees for case management services.
Provide integrated support from all available waivers to serve individuals over their lifespan.	The department agrees integrated support should be provided but adequate resources will be needed to plan and implement necessary changes.
Build on the strengths of the current ASD voucher program to increase access to the program.	The department notes most children utilizing the voucher program qualify for the Medicaid ASD waiver. The department recommends serving children under the ASD waiver program and discontinuing the ASD voucher program.
Create a cross-disability advisory committee and have the ASD Task Force provide input to the committee.	The department supports creating a cross-disability advisory committee but recommends a neutral party provide services and support to the committee.
Develop a project management office for project reporting, guidance, and risk management.	The department agrees ongoing project management resources are necessary to support system transformation and the department is developing project management resources in the executive office.
Develop a referral folder to share with pediatricians, schools, and others to help individuals navigate available services and partner with parent-to-parent groups to make the information known.	The department agrees developing a referral folder and partnering with outside groups would bring more awareness to available services. However, resources and staff would need to be made available to make the changes.
Contract with providers and pay for intake and eligibility assessments.	The department agrees paying assessment costs would benefit families, but funding would be needed.
Centralize eligibility determination for developmental disability administration.	The department agrees having centralized eligibility determinations would be beneficial and the department plans to proceed with these changes.
Align eligibility and level of care by adopting a single eligibility tool for waiver eligibility and to determine level of care for adults.	The department notes if changes are made a plan will be needed to ensure individuals do not lose minimal supports provided through case management.
Use remote supports and assistive technology to assist individuals with a disability.	The department agrees utilizing technology is an essential component of North Dakota's workforce strategy for long-term services and supports for individuals with developmental disabilities, but adequate resources are needed for all areas of care.

### **Committee Recommendations**

The committee recommends a bill draft to:

- Create a cross-disability advisory council and detail the structure of the council.
- Repeal statutory provisions relating to the ASD Task Force.
- Appropriate \$1,453,626, of which 50 percent is from the general fund and 50 percent is from federal funds, to DHHS and authorize 4 FTE positions to allow the department to begin implementing the consultant recommendations.

### **STUDY OF EMPLOYMENT RESTRICTIONS IN PUBLIC ASSISTANCE PROGRAMS**

House Concurrent Resolution No. 3013 (2021) directed the Legislative Management to study issues relating to employment restrictions in public assistance programs. Provisions of the resolution indicated because workforce shortage issues are a major challenge for business development in the state, the study should determine a means to allow employees to work additional hours without losing public assistance benefits.

#### **Previous Studies**

The 2015-16 interim Health Services Committee, pursuant to House Concurrent Resolution No. 3049 (2015), studied issues relating to employment restrictions in public assistance programs.

The committee received information regarding income eligibility limits for public assistance programs, such as the child care assistance program and low-income home energy assistance program. The committee also reviewed work requirements for programs, such as the temporary assistance for needy families (TANF) program which requires recipients to participate in the job opportunities and basic skills (JOBS) program.

The committee reviewed national research regarding the "cliff effect" that occurs when a program participant has a net pay and benefits decrease as a result of accepting additional work hours or a wage increase. The committee reviewed a National Conference of State Legislatures (NCSL) report regarding state policies to counteract the "cliff effect."

### **National Conference of State Legislatures Research**

Assistance programs such as the supplemental nutrition assistance program (SNAP), TANF, child care assistance, and some tax credits do not necessarily restrict work, but when income increases beyond the eligibility threshold, participants are no longer eligible for assistance. In some cases, the additional income does not offset the loss of benefits. For example, if a TANF cash grant, lost due to increased hours or income, exceeds the additional earnings, the participant has a decrease in net pay and benefits for the month as a result of accepting additional work hours or a wage increase. This drop off in benefits that occurs when a person exceeds the income threshold is often referred to as the "cliff effect."

The National Conference of State Legislatures has conducted research on the "cliff effect" and outlined strategies states use to address this issue. The focus of the research was on the income eligibility thresholds for various programs, how to define or establish those thresholds based on cost of living and a state definition of "self-sufficiency," and tax credits and other work supports.

### **Mapping Benefit Cliffs**

Research by NCSL suggested self-sufficiency should be defined and benefit calculators should be used. Financial self-sufficiency, the income level a family requires to meet their basic needs without public assistance, puts the "cliff effect" in context. Some states use 200 percent of the federal poverty guideline, while other states factor in the varying costs of living by geography, household size, and ages of children. Developing a benefits calculator assists caseworkers and families to identify cliffs on an individual or family level and how increases in income could affect benefits.

### **Aligning Eligibility Levels**

Most states have asset limits for programs which cap the total value of assets an individual or family may have and still participate in the program. Forty-seven states have asset limits for TANF ranging from \$1,000 to \$10,000. Some states provide exemptions for assets such as vehicles, savings accounts, and other restricted asset accounts to allow for transportation to work and for saving for education and other purposes.

Income disregards also may be used to lessen the "cliff effect." Excluding earned income from benefit limits for a period of time can ease the transition into employment.

Regardless of program limits, aligning rules and eligibility criteria across programs can reduce complexity and mitigate benefit cliffs. Forty-one states have adopted broad-based categorical eligibility with TANF and 34 states have aligned asset limits with SNAP.

### **Making Work Pay**

Work supports refer to those policies and programs that families can receive while working and serve as a supplement to their wage earnings. According to NCSL, the most common include child care assistance; SNAP; tax credits; and other housing, transportation, and health care programs. The programs are effective at helping families meet their basic needs; however, eligibility can be lost before a family is able to meet those needs on wages alone. Providing work supports and aligning eligibility with self-sufficiency goals can help bridge the gap between earnings and self-sufficiency.

Federal and state tax credits can be used to offset declines in public benefits. Twenty-nine states have state-earned income tax credits to provide an additional benefit to the federal credit.

States also can help workers move to higher-wage jobs by identifying high-growth occupations and opportunities for wage progression. Strategies also may be used to smooth wage transitions. Many states have mapped career pathways to allow students to see a step-by-step progression to higher-wage jobs.

### **Increasing Family Economic Security Through Asset Development**

Many adults do not have adequate savings to cover unexpected expenses. As a result, some states are developing methods for families to build financial assets. Escrow accounts accumulate funds as a participant's income increases without affecting benefits or services. Individual development accounts allow low-income individuals to save money for education, to start a business, to buy a home, or other authorized uses. Deposits in individual development accounts are matched with grant funding from community-based or other organizations.

### **Fostering Culture and System Changes in the Public and Private Sectors**

Employers are affected by benefit cliffs that may limit employment and career advancement for workers which can affect business growth. Engaging employers affected by the benefit cliff in policy discussions can build consensus for

solutions and allow employers to calibrate wage and benefit packages to accommodate benefit cliffs. The fiscal impact of benefit cliff reforms can be reviewed to determine if the cost of reform is offset by new workers entering the labor market and reduced reliance on assistance programs.

Changes in how case managers and other staff interact with families also can be used for better results. Using personal and professional goal setting and career counseling can be used to focus on maximizing opportunities rather than maximizing benefits.

### **Job Opportunities and Basic Skills Program**

The job opportunities and basic skills program is the education and training component of the state's TANF program. Unless determined to be exempt, individuals who receive a TANF cash grant are required to participate in the JOBS program. Exceptions to this requirement include a caretaker age 65 or older, a caretaker or parent of a child younger than 2 months of age, an individual receiving supplemental security or Social Security disability income, and a parent providing care for a disabled family member.

The job opportunities and basic skills program participants are required to complete a minimum number of hours each week in one or more of the approved work activities, including job readiness, job search, paid employment, high school, GED, education directly related to employment, job skills directly related to employment, on-the-job training, vocational training, unpaid work experience, community service, or child care for another participant involved in community service. Involvement in education and training is limited and must be approved by a JOBS program coordinator.

Unless responsible for the care of a child younger than 6 years of age, participants must complete a minimum average of 30 hours per week in one or more approved work activities. If caring for a child under age 6, an individual must complete a minimum average of 20 hours per week in an approved work activity.

The job opportunities and basic skills program offers some supportive services to help participants become self-sufficient. Supportive services include transportation, child care, job readiness, relocation, and tuition assistance; money for license, certification, and examination fees; tools for employment; and care of incapacitated household members. Some of these supportive services can be provided to former TANF participants after their TANF case closes to help them succeed in the workforce.

Individuals who fail or refuse to participate in the JOBS program without a good reason can be sanctioned. A sanction takes the sanctioned individual's financial needs out of the TANF grant for 1 month. If the sanctioned individual fails to demonstrate cooperation with the JOBS program requirements in the penalty month, the entire case will be closed and the sanctioned individual and the individual's household will be ineligible for TANF for 1 additional month. After reapplying for TANF, no individual in the household will be eligible for a TANF benefit until the sanctioned individual cooperates with the JOBS program requirements.

### **North Dakota Labor Force**

According to Job Service North Dakota:

- In 2019 the state's labor force included 394,024 employed and 9,575 unemployed individuals. North Dakota historically has had a higher labor force participation rate than the national average.
- In 2019 North Dakota ranked 4<sup>th</sup> in the nation for labor force participation with an adjusted rate of 69.3 percent, while West Virginia ranked 50<sup>th</sup> with a rate of 55.1 percent.
- North Dakota's unemployment rate was 2.4 percent in 2019.
- In October 2021 the state unemployment rate was 3.2 percent compared to a national unemployment rate of 4.8 percent and North Dakota has 17,564 open jobs, of which 52 percent require a high school diploma or less.
- The industries with the most job openings in North Dakota in October 2021 include health care, office and administration, and transportation.

### **Testimony Received and Committee Considerations**

The committee received the following information from representatives of DHHS regarding public assistance programs:

- The child care assistance program assists in the payment of child care costs of working families with an income less than 60 percent of the state median income.
- The low-income home energy assistance program assists families with an income less than 60 percent of the state median income with home heating costs.

- SNAP provides food benefits for families with an income less than 60 percent of the state median income.
- The TANF program provides financial assistance to low-income families to achieve economic self-sufficiency.
- Options to address the "benefit cliff" include using state funds to replace federal benefit funds lost, adjusting eligibility guidelines to enable a worker to continue to receive benefits, and providing a slow phase-out of benefits received.
- The state is using flexibilities in federal program guidelines to reduce the effect of the benefit cliff.
- The loss of child care assistance is the most difficult cliff to bridge.
- Food and health care eligibility cliffs rank high in family impact.

### **Committee Recommendation**

The committee recommends a bill draft to set the TANF program maximum basic standard of need benefit level to at least 50 percent of the federal poverty level based on household size. The estimated fiscal impact of this bill is an increase in federal funds of \$13,703,272 for the 2023-25 biennium. The bill would increase the estimated number of program recipients from 900 families per month to approximately 1,800 families per month.

### **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 DHHS, 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 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 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 is to provide an annual report to the Governor and the Legislative Council regarding the status of the state ASD plan.

### **Report**

The committee received the following information regarding the ASD Task Force:

- The task force meets on a quarterly basis to examine various topics.
- In 2020, the task force reorganized its work groups into an education and training group and a communication and public awareness group.
- DHHS is recommending Section 50-06-32 be amended to remove the requirement of the DHHS Executive Director or designee to serve as Chairman of the task force.
- DHHS is recommending the facilitation and administration of the task force be contracted to a third party outside DHHS.

## **AUTISM SPECTRUM DISORDER VOUCHER PROGRAM PILOT PROJECT**

House Bill No. 1038 (2013), codified as Section 50-06-32.1, required DHHS 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 a sunset clause for the section to expire on June 30, 2015. However, Section 13 of Senate Bill No. 2012 (2015) provided for the continuation of Section 50-06-32.1 without a sunset clause.

Section 3 of Senate Bill No. 2089 (2021) provides legislative intent that DHHS adopt rules to seek additional flexibility for the administration of the ASD voucher program to ensure families can be served within available appropriations for the program. The administrative rules changes should consider changes that include reducing the amount of approved voucher funds available to each household and the amount of time during which a household may use approved voucher funds.

### **Report**

Representatives of DHHS 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 following is a summary of the program:

Services provided	Assistive technology, training, and other approved support services
Eligible ages	Ages 3 through 17
Financial eligibility	Household income below 200 percent of federal poverty level
Maximum funding per child	\$7,500
Average annual cost per child (state fiscal year 2022)	\$2,424
Program funding source	State general fund
Program funding (state fiscal year 2022)	\$150,000
Number of children enrolled (state fiscal year 2022)	52 children

## **DEVELOPMENTAL DISABILITIES SYSTEM REIMBURSEMENT PROJECT**

Section 50-06-37, as enacted by Senate Bill No. 2043 (2011), required DHHS, 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 DHHS 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 across all providers.

Section 50-06-37 was amended by Senate Bill No. 2247 (2019) to provide DHHS 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 DHHS, and a representative of the Protection and Advocacy Project. The steering committee is to analyze appropriate data and recommend to DHHS 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 DHHS reported the following regarding the developmental disabilities payment system:

- Before April 2018, a retrospective payment system was utilized for developmental disability provider payments.
- The current system provides a standard rate statewide and the level of staffing is based on the needs of individuals utilizing services.
- The developmental disabilities payment steering committee will continue to review the payment system.

## **MEDICAID EXPANSION PROVIDER REIMBURSEMENT RATES**

Section 32 of House Bill No. 1012 (2021) continued the Medicaid Expansion program by removing the sunset clause on Section 50-24.1-37. The section provides for the contract between DHHS and the insurance carrier to include a provision for the carrier to provide DHHS with provider reimbursement rate information when selecting a carrier. The section also requires DHHS to provide the Legislative Management a report regarding provider reimbursement rates under the medical assistance expansion program.

### Report

A representative of DHHS provided the following report detailing the actual percentage for each service for Medicaid Expansion rates compared to traditional Medicaid rates in 2018 and 2019:

Service	2018	2019
Inpatient	158.80%	151.72%
Outpatient	204.07%	204.20%
Professional	167.54%	165.39%
Overall	173.90%	170.27%

### TRIBAL HEALTH CARE COORDINATION FUND

Section 50-24.1-40, as enacted in House Bill No. 1194 (2019), provides for DHHS to facilitate care coordination agreements between health care providers and tribal health care organizations which will result in 100 percent federal funding for eligible medical assistance provided to an American Indian. The section, as originally enacted, 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 was to be deposited 60 percent in the tribal health care coordination fund and 40 percent in the general fund. House Bill No. 1407 (2021) amended the section to provide 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 80 percent in the tribal health care coordination fund and 20 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 DHHS and the tribal government. The agreements must require the tribal governments to use funding distributed from the tribal health care coordination fund for the 10 essential services of public health identified by the federal Centers for Disease Control and Prevention and the development or enhancement of community health representative programs or services. Through June 30, 2025, no more than 50 percent, and after that date 35 percent, may be used for capital construction. The agreements between DHHS and tribal governments also must require tribal governments to submit annual reports to DHHS regarding the use of money distributed from the tribal health care coordination fund. Tribal governments also must submit to DHHS every 2 years an audit report regarding the use of funding distributed from the tribal health care coordination fund.

The Department of Health and Human Services is to provide a report to the Legislative Management before August 1 of each even-numbered year regarding the tribal health care coordination fund including how participating tribal governments used funding distributed from the fund.

### Report

Representatives of DHHS reported the following regarding the tribal health care coordination fund:

- DHHS can facilitate care coordination agreements between health care providers and tribal health care organizations which will result in 100 percent federal funding for eligible medical assistance provided to an American Indian.
- 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 80 percent in the tribal health care coordination fund and 20 percent in the general fund.
- No additional federal funds have been received due to care coordination agreements.

### CHILDREN'S HEALTH INSURANCE PROGRAM

Section 50-29-02 provides DHHS 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 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.

### Report

A representative of DHHS reported the following:

- For the 2019-21 biennium, a total of \$19.5 million, of which \$4.8 million is from the general fund, was spent on the children's health insurance program through a fee-for-service arrangement.
- From July 1, 2021, through April 30, 2022, a total of \$9.6 million, of which \$2.7 million is from the general fund, was spent on the children's health insurance program through a fee-for-service arrangement.
- A total of 3,226 children were enrolled in the program in April 2022.

## **HUMAN SERVICE ZONE EMPLOYMENT AND INDIRECT COSTS**

### **Indirect Costs**

Section 50-35-02, as amended by Senate Bill No. 2086 (2021), provides for DHHS, with assistance from the North Dakota Association of Counties and human service zone directors, to study human service zone indirect costs. The study must identify a plan defining the process to calculate payment for indirect costs. Section 50-35-01 defines indirect costs as salaries, benefits, and operating costs incurred in providing those goods and services to support human services that generally are available for the common benefit of multiple county agencies which are not identified by the department as a direct cost. Indirect costs include legal representation; facilities and related costs, such as utilities and maintenance; administrative support, including payroll, accounting, banking, and coordination; information technology support and equipment; and miscellaneous goods and services, such as transportation, supplies, insurance coverage, phone, and mail services.

### **Zone Employment**

Section 50-35-02, as amended by Senate Bill No. 2086 (2021), provides for DHHS, with assistance from the North Dakota Association of Counties and human service zone directors, to develop a process for allowing a human service zone to opt in to state employment. The process must identify under what conditions and factors a transition to state employment may or may not be desirable for a human service zone and the department; outline the governance process for choosing to opt in to state employment, including a description of the role of the human service zone board, county commissions, and the department; and include a template and potential timeline for any zone choosing to make the transition to state employment. The department is to report to the Legislative Management the process developed for allowing a human service zone to opt in to state employment. The transition to state employment is contingent on the approval from the Legislative Assembly.

### **Report**

Representatives of DHHS reported the department collaborated with human service zones, county auditors, and others to review options to adjust the indirect cost reimbursement method for human service zones. The workgroup recommends:

- Updating definitions to provide costs entirely attributable to a human service zone will be reimbursed as a direct cost except for space and facility costs.
- Clarifying that counties cannot directly bill human service zones or the department and reimbursement will be provided only through the department's indirect cost plan.
- Establishing timelines for counties to respond to requests for information in the development of the indirect cost plan.
- Having the indirect cost plan become effective August 1, 2023, and be included in county budgets for 2024.

A representative of DHHS reported the department reviewed options for allowing human service zones to transfer zone employees to state employment and determined it was not feasible.

## **REFUGEE RESETTLEMENT SERVICES**

Section 20 of House Bill No. 1012 (2021) provided for DHHS to provide a report to the Legislative Management regarding refugee resettlement services. The section also provides for DHHS to collaborate with federal and private placement entities to resettle refugees in at least five geographically diverse communities in the state with a goal of resettling 25 percent of new refugees outside of existing resettlement communities.

Section 50-06-01.4 assigns responsibility for refugee services to DHHS. Until 2010, the department employed a full-time refugee coordinator and administered the Refugee Resettlement program. The department acted as a fiscal passthrough agent for federal refugee services funding and played a larger role overall in the state's involvement in refugee resettlement. In July 2010, as the result of a memorandum of understanding between the department and Lutheran Social Services, the department transitioned most refugee-related services to Lutheran Social Services. The decision to transition refugee resettlement services was an executive branch decision by Governor John Hoeven. The transition shifted the responsibility for securing federal grant funding, providing services, and fulfilling required reporting requirements to Lutheran Social Services, the only federally recognized and approved refugee resettlement organization in the state. In early 2021, Lutheran Social Services discontinued operations. The 2021 Legislative Assembly added \$4.3 million of federal funding and 4 FTE positions to the DHHS budget for the 2021-23 biennium for the department to administer refugee resettlement services.

### **Report**

The committee received the following updates regarding refugee resettlement services:

- DHHS offers refugee support services such as employment and skills training, language learning, and youth mentorship.
- The goal of providing services is to allow for self-sufficiency and integration.
- The number of refugees resettled in state the past 25 years has varied from 35 to 623 per year.
- The United States Department of State authorized the settlement of 276 refugees and Afghanistan evacuees in the state during federal fiscal year 2022.
- Collaborations are being developed to enhance English language learning to maximize refugee participation in the workforce.

### **EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT PROGRAM STUDY**

Section 59 of House Bill No. 1012 (2021) required DHHS to conduct a study of the early and periodic screening, diagnostic, and treatment program (EPSDT) and to prepare a report. The report is to include data on the number, ages, and geographic locations of children receiving screening, diagnostic, and treatment services; the capacity of the program to ensure all children who require screening, diagnostic, and treatment services are identified and receive services; data on the disposition of referrals of children who are screened and eligible for diagnostic and treatment services, including how many receive services and how many do not receive those services by county; an assessment of the program's efforts to provide comprehensive screening and treatment for children as required by federal law; an assessment of the deficits of the program's efforts to provide comprehensive screening and treatment as required by federal law; recommendations to ensure or expand services so that all eligible children are adequately served by the program; and additional data needed to assess the program's accountability and efficiency. The department was required to provide the report to the Legislative Management before October 1, 2022.

The early and periodic screening, diagnostic, and treatment program, also known as Health Tracks, is a preventative health care program for newborns and children through age 20 who are enrolled in Medicaid. The program provides preventative health screenings and well-child checkups to help prevent and identify health problems. Services that may be provided under the program include physical exams, hearing and vision checks, glasses and hearing aids, vaccines, dental care, health education, behavioral health screenings, growth and development checks, nutrition counseling, and other health services.

#### **Report**

A representative of DHHS reported the department contracted with a consultant to review the EPSDT program. The following recommendations were provided by the consultant:

- EPSDT-related services should be referred to as a "benefit" rather than a "program" to help patients and families best understand the benefits to which they are entitled.
- The state needs to understand the limits of the amount and types of information reported in the Centers for Medicare and Medicaid Services Form 416. The state should engage stakeholders to develop specific program measurement tools that are not reported federally.

### **BASIC CARE FACILITY PAYMENT METHODOLOGY**

Section 60 of House Bill No. 1012 (2021) required DHHS to develop a revised payment methodology for basic care facilities. The department, in collaboration with basic care providers and other representatives of the basic care industry, is to develop a report for payment methodology revisions for basic care facilities which must include recommendations for:

1. Methods of reimbursement for basic care facility cost categories, including direct care, indirect care, room and board, and property; and
2. The feasibility of standardizing payments for basic care facilities in the same peer group.

The department was to present the report to the Legislative Management before October 1, 2022. The estimated costs related to the implementation of the payment methodology revisions must be included in the department's 2023-25 biennium budget request submitted to the 68<sup>th</sup> Legislative Assembly.

#### **Report**

A representative of DHHS reported meetings were held with representatives of DHHS, basic care providers, and the North Dakota Long Term Care Association. A consultant was utilized to assist in the development of the revised payment methodology. Discussions focused on how basic care fits into the continuum of care, provider demographics, and the need for public education.



The following is a summary of the recommendations provided by DHHS regarding a new funding methodology for basic care facilities:

Parameter	Recommendation
Payment limits	Median of facilities per diem rates plus 18 percent for direct cost and 12 percent for indirect costs
Rebasing frequency	Rebase rates every 4 years
Rebasing data utilized	Utilize current cost reports
Date to file cost reports	June 30 <sup>th</sup> of each year

The estimated cost to implement the recommendations is \$6 million, of which \$3.9 million is from the general fund for the 2023-25 biennium.

## EARLY CHILDHOOD PROGRAMS

Section 61 of House Bill No. 1012 (2021) required DHHS to provide a report to the Legislative Management regarding the status of 4-year old program approvals, the North Dakota Early Childhood Council, and the early childhood grant for best in class 4-year old experiences.

House Bill No. 1416 (2021) transferred early childhood education duties from the Department of Public Instruction to DHHS. The bill allows local school districts to establish 4-year old programs and provides for DHHS to approve the programs. The Legislative Assembly transferred 3 FTE positions and \$700,000, of which \$300,000 is from the general fund, from the Department of Public Instruction to DHHS.

House Bill No. 1466 (2021) created the best in class 4-year old program grant. Four-year old programs are approved child care programs operated by a public or private educational entity or an early childhood program designed to serve 4-year olds. A 4-year old program may apply for a grant of up to \$120,000 per group size and must provide \$20,000 of matching funds. Grant recipients must follow guidelines regarding the admission of children into the program and educational content provided. The grant program is effective through June 30, 2025. The Legislative Assembly authorized 3.7 FTE positions and appropriated \$5,458,910 of which \$1,500,000 is from the general fund for the program for the 2021-23 biennium. In June 2021, the Emergency Commission and Budget Section authorized DHHS to receive and expend an additional \$1,700,000 of federal COVID-19 relief funding received by the Department of Public Instruction for the grant program.

### Report

A representative of DHHS reported the best-in-class 4-year old program:

- Provides quality early childhood experiences for children in the year before kindergarten.
- Provided funding to 23 programs during the 2021-22 school year, and 38 programs had been approved through June 2022 to receive 2022-23 school year grants.

## MERGER OF THE DEPARTMENT OF HUMAN SERVICES AND STATE DEPARTMENT OF HEALTH

The Legislative Assembly, in House Bill No. 1247 (2021), provided for the merger of the State Department of Health and DHS to create DHHS. In House Bill No. 1247, the Legislative Assembly provided legislative intent that, effective September 1, 2022, the State Department of Health merge into DHS and both agencies be called the Department of Health and Human Services and that, effective September 1, 2022, the State Department of Health, including the State Health Officer, be under the authority of the Executive Director of DHS who will be the Executive Director of the DHHS. Legislative intent also requires during the 2021-23 biennium, the Executive Director of the former DHS review and reorganize the structure of the former DHS to incorporate the former State Department of Health and to find efficiencies in the newly formed DHHS. Section 511 of House Bill No. 1247 provides for the State Health Officer, the Executive Director of DHS, and then the Executive Director of DHHS to provide reports to the Legislative Management regarding the status of the merger.

### Report

The committee received the following updates regarding the merger:

- Various strategies were used to engage employees in the merger process.
- Ongoing weekly integration workstream sessions and leadership team update sessions were held.
- Podcasts were used to allow employees to learn about services that will be provided by the integrated department.
- A town hall meeting was held to allow employees to receive additional information and ask questions.

- The newly formed DHHS became effective September 1, 2022, and work continues to further integrate programs and unify paths to service entry.
- The new organizational structure includes divisions for public health, medical services, behavioral health, human services, and administrative functions.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES MEDICAID PROGRAM QUALITY STRATEGY**

Senate Bill No. 2135 (2021) required DHHS to provide a report to the Legislative Management by July 1, 2022, regarding the department's Medicaid program quality strategy. The report was to include quality data, verification the department shared the report with stakeholders such as the State Department of Health and North Dakota Health Information Network, and recommendations for improvement.

### **Report**

A representative of DHHS reported the following regarding the department's Medicaid program quality strategy:

- The department's quality strategy is data-driven and utilizes various goals and aims to optimize performance.
- The department's strategy utilizes the following aims and goals:

<b>Aim</b>	<b>Goals</b>
Healthier populations	<ul style="list-style-type: none"> <li>• Improve behavioral health for members</li> <li>• Improve outcomes for members with substance use disorders</li> <li>• Improve health for members with chronic conditions</li> </ul>
Better outcomes	<ul style="list-style-type: none"> <li>• Enhance provider support</li> <li>• Ensure access to care</li> </ul>
Better experience	<ul style="list-style-type: none"> <li>• Enhance member experience</li> </ul>
Smarter spending	<ul style="list-style-type: none"> <li>• Focus on paying for value</li> </ul>

## **CHILDREN'S CABINET**

Senate Bill No. 2313 (2019) created a Children's Cabinet to assess, guide, and coordinate the care for children across the state's branches of government and the tribal nations. The cabinet consists of 12 members including the Speaker of the House of Representatives or a designee, the President Pro Tempore of the Senate or a designee, and the Chairman of the Legislative Management or a designee who serves as the presiding officer.

### **Testimony Received**

The committee received a report from a representative of the Children's Cabinet that noted the following:

- The cabinet has been reviewing the foster care system, mental health services, and the overrepresentation of Native American children in the welfare system.
- The membership of the cabinet and reporting requirements of the cabinet may need to be adjusted to allow for proper representation of the Legislative Assembly.

### **Committee Recommendation**

The committee recommends a bill draft to adjust the membership and duties of the Children's Cabinet to:

- Remove the Speaker of the House of Representatives and the President Pro Tempore of the Senate from the membership of the cabinet.
- Provide for the House and Senate Majority Leaders to each appoint two members from their respective chambers to serve on the cabinet and provide for one member from each chamber to be from an even-numbered legislative district and one member from each chamber to be from an odd-numbered legislative district.
- Add the Executive Director of DHHS to the membership of the cabinet.
- Provide for the cabinet to report annually to the Governor and the Legislative Management regarding the activities of the cabinet.

## **GUARDIANSHIP SERVICES**

A guardianship is a court-appointed relationship between a competent adult and an adult deemed incapacitated by a court. A person may be deemed incapacitated by reason of mental illness, physical illness, disability, or chemical dependency. Guardians oversee the incapacitated person's financial, legal, health, and other matters.

Guardianship services are provided by:

- Office of Management and Budget - Grants to private agencies and individuals who provide guardianship services to indigent individuals.
- Judicial branch - Guardians ad litem for child abuse and neglect cases.
- DHHS - Corporate guardianships for developmental disabilities and aging services program recipients.

### **Committee Recommendation**

The committee recommends a bill draft to provide appropriations to DHHS and the Office of Management and Budget to increase funding for guardianship services. The bill draft includes a \$500,000 general fund appropriation to DHHS to increase funding for developmental disability guardianships and includes a \$500,000 general fund appropriation for the Office of Management and Budget to increase funding for indigent guardianship grants.

### **OTHER INFORMATION RECEIVED**

The committee also received reports and updates regarding the following items:

- The federal COVID-19 public health emergency.
- The status of the Medicaid Expansion program.
- Medicaid pharmacy services.
- The Medicaid 1915(i) state plan amendment.
- Youth shelter and residential facilities.
- Domestic violence services.
- Permanent supportive housing services.
- Home- and community-based services.
- Behavioral health services.
- The State Department of Health laboratory facility.
- Background checks conducted by DHHS.
- The program of all-inclusive care for the elderly.
- FirstLink 988 and 211 services.
- A new organizational structure for human service centers.

### **BEHAVIORAL HEALTH BED MANAGEMENT SYSTEM**

The committee submitted this portion of the report to the Legislative Management on November 1, 2021. The Legislative Management accepted the report for submission to the 67<sup>th</sup> Legislative Assembly, which met in special session November 8-12, 2021.

#### **Background**

Section 50-06-41.3, as created in House Bill No. 1012 (2021), requires DHS to establish and maintain a behavioral health bed management system to improve utilization of behavioral health bed capacity. The section requires public and private providers of residential or inpatient behavioral health services to participate in and report daily to DHS the information and documentation necessary to maintain the system. The database can then be used by providers to identify available behavioral health beds in the state.

#### **Testimony and Committee Discussion**

The committee received testimony indicating many behavioral health programs managed by the Department of Corrections and Rehabilitation (DOCR) are licensed by DHS and would be included in the behavioral health bed management system. However, because behavioral health beds managed by DOCR are not available to the public, it may not be appropriate to include those beds in the database.

### **Committee Recommendation**

The committee recommended Senate Bill No. 2348 to amend Section 50-06-41.3 to exclude DOCR from participating in the behavioral health bed management system. The bill was approved during the special legislative session.

# 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 2021-22 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 2021-22 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 statutory responsibilities for the 2021-22 interim, the Legislative Management assigned the committee the following responsibilities:

- Receive a report from the CIO, before June 1 of each even-numbered year, regarding the implementation of distributed ledger technologies (Section 54-59-02.2).
- 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 CIO regarding all disclosed cybersecurity incidents as required in Chapter 54-59.1, including the status of the cybersecurity incident and any response or remediation to mitigate the cybersecurity incident (Section 54-59.1-07).
- Receive a report from the Emergency Services Communications Coordinating Committee (ESC3) before November 1, 2022, 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 Commissioner of University and School Lands regarding the status of the IT project (Section 5 of Senate Bill No. 2013 (2021)).
- Receive an annual report from ITD regarding any efficiencies gained and cost-savings realized as a result of the 2021-23 biennium IT unification initiative (Section 10 of Senate Bill No. 2021 (2021)).
- Study the effectiveness, efficiency, cost, and any cost-savings of the 2019-21 biennium and 2021-23 biennium IT unification initiatives and the feasibility and desirability of continuing the initiatives. The study must include a review of changes in fees, services, operations, processes, and systems (Section 14 of Senate Bill No. 2021).
- Study the costs incurred by ITD to deliver core technology services and cybersecurity services to state agencies and political subdivisions. The study must consider the feasibility and desirability of political subdivisions paying their share of the cost of these services (Section 15 of Senate Bill No. 2021).

Committee members were Representatives Glen Bosch (Chairman), Sebastian Ertelt, Keith Kempenich, Corey Mock, Nathan Toman, and Robin Weisz; Senators Cole Conley, Kyle Davison, Richard Marcellais, Dave Oehlke, and Kristin Roers; and Nonvoting Member Shawn Riley.

## **STUDY OF INFORMATION TECHNOLOGY UNIFICATION**

### **Background**

Pursuant to Section 14 of Senate Bill No. 2021, the committee studied the effectiveness, efficiency, cost, and any cost-savings of the 2019-21 biennium and 2021-23 biennium IT unification initiatives and the feasibility and desirability of continuing these initiatives. The study included a review of changes in fees, services, operations, processes, and systems.

#### **2017-18 Interim**

During the 2017-18 interim, ITD began the process of consolidating IT services, such as desktop support and help desk services, and consolidating full-time equivalent (FTE) IT positions in the Governor's cabinet of executive branch state agencies with existing ITD FTE positions and resources in a shared services IT unification initiative.

To start the unification initiative, ITD conducted an assessment of all executive branch IT employees, evaluating staff skills, needs, strategies, objectives, and costs. The major phases of the unification workforce transition process included data gathering, transitional grouping, deep data analysis, and reporting.

During the 2017-18 interim, ITD identified all positions in Governor's cabinet agencies that include IT-related functions to evaluate whether these positions would be included in the unification plan. The department estimated over 700 FTE positions in ITD and the Governor's cabinet agencies perform IT-related job duties. Phase 1 of ITD's workforce transition process evaluated 577 of these FTE positions and determined 513 FTE positions actually perform IT-related job functions, including 344 FTE positions in ITD.

#### **2019-20 Interim**

Section 7 of House Bill No. 1021 (2019) provided for a study during the 2019-20 interim regarding ITD's transition to the run-grow-transform model and the IT unification initiative. The study was to include a review of changes in fees, services, operations, processes, and systems.

During the 2019-20 interim, ITD reported to the Information Technology Committee on the effect the 2019-21 biennium IT unification initiative had 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. 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 department reported the success of the 2019-21 biennium IT unification pilot project would be measured by evaluating IT mission alignment, cost management, risk containment, processes, tools, contracts, FTE positions, cost of units of service, and volume purchasing efficiency.

#### **Legislative Action**

The 2019 Legislative Assembly approved a transfer of 96 FTE IT positions from five agencies to ITD, as a pilot project to consolidate IT resources and personnel in state government. The 2021 Legislative Assembly approved additional unification of state government IT resources and personnel, including the transfer of 53 FTE positions from 10 agencies to ITD.

The following is a summary of FTE positions transferred to ITD as a result of the 2019-21 and 2021-23 biennium IT unification initiatives:

Agency	FTE Positions Transferred - 2019-21 Biennium	FTE Positions Transferred - 2021-23 Biennium	Total FTE Positions Transferred
110 - OMB		4.00	4.00
190 - Retirement and Investment Office		2.00	2.00
226 - Department of Trust Lands (DTL)	2.00		2.00
301 - State Department of Health		4.00	4.00
303 - Department of Environmental Quality		1.00	1.00
325 - Department of Human Services	48.00		48.00
380 - Job Service North Dakota (JSND)		16.00	16.00
471 - Bank of North Dakota		16.00	16.00
504 - Highway Patrol		2.00	2.00
530 - Department of Corrections and Rehabilitation (DOCR)		6.00	6.00
540 - Adjutant General - Department of Emergency Services	4.00		4.00
601 - Department of Commerce		1.00	1.00
720 - Game and Fish Department		1.00	1.00
750 - Parks and Recreation Department	1.00		1.00
801 - Department of Transportation (DOT)	41.00		41.00
Total	96.00	53.00	149.00

Section 10 of Senate Bill No. 2021 required ITD to charge a state agency selected to participate in the 2021-23 biennium IT unification initiative a rate for the labor of any FTE position transferred to ITD during the 2021-23 biennium which may not exceed the salaries and wages and related operating expenses of the FTE positions for services the respective state agency was performing prior to the 2021-23 biennium. Legislative intent was provided that any FTE position transferred to ITD for the 2021-23 biennium IT unification initiative be transferred to the agency employing the position during the 2019-21 biennium, unless the 68<sup>th</sup> Legislative Assembly is presented with sufficient evidence of efficiencies gained and cost-savings realized by the state as a result of the 2021-23 biennium IT unification initiative. During the 2021-22 interim, ITD is required to report annually to the Legislative Management regarding any efficiencies gained and cost-savings realized as a result of the 2021-23 biennium IT unification initiative.

### Information Technology Department

#### Staffing and the Coronavirus Pandemic

The committee received testimony from ITD regarding IT unification, including FTE positions transferred to ITD during the 2019-21 and 2021-23 bienniums and how IT unification affected ITD and the state's ability to respond to the Coronavirus (COVID-19) pandemic. The testimony indicated:

- Of the 96 FTE positions transferred to ITD for the 2019-21 biennium, 3 FTE positions were removed by budget reductions, 21 FTE positions are dedicated to operations and customer success roles, 61 FTE positions are dedicated to technology roles, 9 FTE positions are dedicated to data roles, and 2 FTE positions are dedicated to security roles.
- Of the 53 FTE positions transferred to ITD for the 2021-23 biennium, 8 FTE positions are dedicated to operations and customer success, 41 FTE positions are dedicated to technology roles, and 4 FTE positions are dedicated to data roles.
- The transition of state employees to remote working at the beginning of the COVID-19 pandemic was streamlined with unified agencies, as less time and effort were needed to activate and leverage unified tools and devices.

#### Rates and Fees

The committee received testimony from ITD regarding fees and rates charged by ITD to state agencies for services provided, how IT unification has affected rates, federal requirements of internal service fund agencies, how ITD manages the balance of the ITD operating service fund, and examples of rate reductions from prior bienniums. The testimony indicated:

- ITD maintains two billing categories, telecommunications rates, and data processing rates.
- For each biennium, ITD establishes IT rates for services provided to state agencies during the spring of each even-numbered year before the biennium.
- ITD does not maintain different rates for services provided to executive and nonexecutive branch agencies or for federally funded agencies and general fund agencies.
- Certain agencies have underfunded IT needs, which has been discovered during the IT unification initiative.
- If IT efficiencies are realized which result in a decrease in cost, the decreased cost to the agency often results in an increase in the quantity of IT services requested by the agency of ITD.

- Salaries and wages, operating expenses, and other related expenses are considered when establishing IT rates for services to be provided to state agencies.
- Not all efficiencies realized affect service rates.
- ITD is considered an internal service fund and is subject to federal Office of Management and Budget A-87 regulations, which are evaluated on June 30<sup>th</sup> of each year and which require ITD to limit available cash to the equivalent of 60 days of the agency's average operating expenses.
- ITD is concerned if the Legislative Assembly removes general fund appropriations from state agency budgets and appropriates the funding to ITD, federal funding received by agencies may no longer be available for IT services.

### **Service Agreements and Help Desk Requests**

The committee received testimony from ITD regarding service level agreements entered with state agencies, services and rates agreed to, how the quality of services is measured, and the types and number of Help Desk requests from unified and nonunified agencies, including a comparison of the number of requests. The testimony indicated:

- ITD maintains service level agreements based on services offered and only enters agreements with specific agencies if the agencies have unique service needs.
- ITD and unified agencies engage in more detailed discussion regarding IT business needs, goals, objectives, and accomplishments compared to nonunified agencies.
- Services available to unified agencies which are not available to nonunified agencies include application patch and update management, service and demand management with real-time dashboard statistical updates, access to enterprise toolsets, and automation of manual processes.
- ITD receives an average of 12,000 Help Desk requests each month and after the integration of unified state agencies systems, the expectation is the average will increase to between 13,000 and 14,000 each month as unified agencies cease management of their IT service needs.
- Prior to IT unification, more than 20 incident management software applications were being utilized by executive branch agencies. The number of applications has been reduced to 5.

### **Challenges**

The committee received testimony from ITD regarding challenges of implementing IT unification. The testimony indicated IT unification has resulted in the following challenges:

- IT unification was designed to be a 4-year process starting at the time each agency was unified in July 2019 and July 2021. The COVID-19 pandemic delayed nearly a year of planned IT unification work for agencies unified in July 2019.
- Additional effort has been needed to integrate unified devices and provide support for applications.
- Hesitation of some unified agencies to use Help Desk services rather than the FTE positions that no longer work for their agency.
- Concerns reported by some unified agencies of lack of personalized services when experiencing IT issues, the timeliness of responses from ITD, and a lack of desire to use ITD's customer success service.

### **Efficiencies and Cost-Savings**

The committee received testimony from ITD regarding IT unification, including efficiencies gained and cost-savings realized as a result of the 2021-23 biennium IT unification initiative pursuant to Section 10 of Senate Bill No. 2021 (2021). The testimony indicated IT unification:

- Is evaluated by ITD based on the ability to save time and money and reduce redundant processes.
- Increases IT cost transparency, communication, collaboration, productivity, IT planning and strategy, quality of IT services provided, the efficiency of processes, tools, contracts, FTE positions, and volume purchasing, and has saved the state time and money.
- Provides for technology that is able to interconnect between agencies, a centralized strategic direction, increased collaboration, reduced security vulnerabilities, less wasted work, better usage and availability of data, and leveraging and reassignment of resources to higher value work.
- Lowered the average cost of IT labor and the ratio of IT devices managed per FTE position compared to when unified FTE positions were in their original agencies.
- Allowed ITD to receive a 16 percent discount on Microsoft productivity suite licensing, saving approximately \$1.6 million per biennium, and a 12 percent discount on desktop hardware, saving approximately \$504,000 per biennium.

- Allowed ITD to negotiate lower-cost enterprise contract agreements for Adobe Acrobat Pro licenses and Granicus short message services, saving approximately \$340,000 per biennium.
- Allows unified agencies to have IT devices replaced every 3 to 4 years rather than every 5 to 6 years.
- Reduced the time needed for application updates, remote support of devices, and application user account creation, which is approximately equivalent to 1.28 FTE positions.
- Reduced duplicated work by IT staff working in separate agencies by using an enterprise demand management system, sharing best practices, templates, and tools, and deploying demand management dashboards.
- Allows for FTE positions to be cross-trained in multiple areas of IT which reduces the risk of lost data or knowledge if only one individual is knowledgeable in an area and that individual is on vacation or terminates employment.
- Allowed ITD and the Bank of North Dakota project management office to consolidate, allowing the Bank to reallocate 1 FTE position to other work.
- Resulted in the formation of a public safety team consisting of representatives of ITD, DOCR, Highway Patrol, and Department of Emergency Services.
- Has not resulted in state agencies incurring additional costs due to work agreed upon before IT unification.

### **Future Information Technology Unification**

The committee received testimony from ITD regarding potential IT unification for the 2023-25 biennium and future bienniums. The testimony indicated:

- The 2019-21 biennium and 2021-23 biennium IT unification initiatives have aligned the majority of executive branch IT resources, resulting in efficiencies and an increase in services provided.
- While prior IT unification initiatives were focused on the transfer of IT staff, future IT unification efforts will focus on improving technology so state agencies have similar IT processes and systems.
- ITD will not seek authorization from the 2023 Legislative Assembly to transfer FTE IT positions from other agencies to ITD for IT unification.

### **Agencies in Support of Information Technology Unification**

The committee received testimony from DOT, the Bank of North Dakota, and Game and Fish Department regarding benefits or concerns of IT unification, any cost-savings realized as a result of IT unification, and a comparison of ITD invoices and bills for services provided to the agency before and after IT unification.

#### **Department of Transportation**

- Benefits of unification include workstation standardization, server consolidation, and contract management.
- Concerns of unification include district DOT offices losing onsite IT support; a lack of communication with ITD regarding ITD services, rates, and support; and DOT financial management lacking IT expertise to review, evaluate, and potentially correct ITD invoices, which was done previously by the IT staff transferred to ITD.
- An accurate comparison of DOT IT costs before and after IT unification is not possible due to DOT and ITD's accounting policies regarding overhead costs differing, but generalized information by business function can be provided.
- DOT monthly invoices from ITD include more than 4,000 service charges ranging from \$0.01 to \$57,000.
- DOT IT expenses increased \$4.5 million or 18.5 percent from the 2017-19 biennium to the 2019-21 biennium, of which \$2.4 million was related to a driver's license and motor vehicle large IT project and \$2.1 million was related to other ITD service charges, including salary and benefit hourly labor rates, hardware, software, desktop support, and other services.
- Some DOT IT projects and tasks undertaken after unifying with ITD could have been completed without unification but might not have been completed as soon, or certain strategic plans would not have been developed.

#### **Bank of North Dakota**

- Benefits of IT unification include additional resources for innovation and project management, access to ITD's pool of resources, enhanced information security resources, a decrease in unnecessary procurement processes, improved strategic partnerships between the agencies, and assistance from ITD in overcoming IT inventory supply chain issues.



- Concerns of IT unification include ITD service times for the Bank's IT issues (i.e. help desk tickets), a lack of timely business communication from ITD, and having appropriate change management plans during unification staff transition.
- ITD developed an action plan to address each concern to provide additional value in the form of cost-savings, better software or IT resources, more efficient processes, or fewer unnecessary procedures.
- ITD designates a customer success manager for each unified agency and, while the Bank's assigned customer success manager is a position transferred from the Bank to ITD, the individual continues to be located at the Bank.
- The Bank believes IT unification will be successful for both agencies.

### **Game and Fish Department**

- Benefits of IT unification include access to ITD technology solutions, enterprise licensing, procurement, support, training, user experience, software services including deployment and maintenance services, cybersecurity protection, and an enhanced ability to plan and collaborate with ITD for project development and management.
- Concerns of IT unification include the coordination of people, processes, and technology and the increase in cost after unifying with ITD.
- Since unifying with ITD at the start of the 2021-23 biennium, the Game and Fish Department has experienced a 10 percent reduction in phone costs and increases of 7 percent for IT development and 35 percent for data processing.

### **Agencies Not in Support of Information Technology Unification**

The committee received testimony from DTL regarding benefits or concerns of IT unification, any cost-savings realized as a result of IT unification, and a comparison of ITD invoices and bills for services provided to DTL before and after IT unification and from the Insurance Commissioner, Department of Public Instruction (DPI), Industrial Commission, and Tax Commissioner regarding the potential benefits, issues, and concerns of IT unification, and the agency's interest in being included in future IT unification initiatives.

### **Department of Trust Lands**

- The 2019 Legislative Assembly transferred 2 of DTL's 3 FTE IT positions to ITD, resulting in DTL partially unifying IT services with ITD.
- DTL has experienced concerns with IT unification, including the timeliness of programming services provided by ITD and whether ITD or DTL staff are responsible for certain services and duties.
- Suggestions to improve the IT unification process include establishing a process for communication between unified agencies and ITD regarding roles and responsibilities after unification; providing a clear understanding of how IT unification will affect capital projects; requiring ITD service invoices to provide additional detail to increase transparency regarding which services are provided and at which rates; increasing communication between ITD and agencies when service rates are increased, decreased, or are added or removed from invoices; and encouraging ITD to recognize the unique business model needs of each unified agency.
- ITD invoices for services provided to DTL totaled \$136,034 during fiscal year 2018, \$158,039 during fiscal year 2019, \$208,881 during fiscal year 2020, and \$222,817 during fiscal year 2021.
- If an agency elects to partially unify with ITD like DTL did, it would be beneficial for ITD to conduct the start, stop, continue process with both staff unifying with ITD and staff staying with the original agency to clearly define duties of IT staff in both agencies.

### **Insurance Commissioner**

- Of the Insurance Commissioner's 38 FTE positions, 1 is an FTE IT position.
- A benefit of IT unification is having a larger team of IT staff to assist the agency with its IT needs.
- Concerns of IT unification include anticipated increases in IT costs after unifying with ITD and not having dedicated staff who are knowledgeable about national insurance IT systems.
- Other employees of the Insurance Department are capable of performing duties of the FTE IT position if that individual is on vacation or unable to work for a short time period.

### **Department of Public Instruction**

- Of DPI's 86.25 FTE positions, 7 are FTE IT positions, which often work collaboratively with ITD.

- Potential benefits of DPI unifying IT staff with ITD are joining an agency with established processes to allow for sharing of IT expertise and best practices.
- Workforce transition evaluations need to be completed before DPI considers unifying with ITD to analyze IT costs, prevent unnecessary organization hierarchy, and improve ITD output and service response times.
- It is unknown if the needs of K-12 schools could continue to be met by DPI if the agency unifies IT staff with ITD, but conversations between the two agencies are ongoing.

### **Industrial Commission**

- The Industrial Commission is not unified with ITD but uses ITD network, email, website, cybersecurity, license and certificate purchase, project management, IT procurement, and hosting services.
- The Industrial Commission recently completed a 3-year project to upgrade the agency's master database platform from a legacy system to a cloud-based, web-enabled system known as NorthStar, which was completed using ITD's project management process.
- The Industrial Commission does not support unifying with ITD by transferring FTE positions to ITD due to the unique IT needs of the agency, specifically related to the NorthStar system, institutional knowledge of Industrial Commission IT staff, and the need for timely responses to agency IT needs that can be best met with IT staff working for the Industrial Commission.

### **Tax Commissioner**

- Of the Tax Commissioner's 118 FTE positions, 7 are FTE IT positions.
- Due to the complexity of the Tax Department's tax and revenue collection software, GenTax, and the need for timely responses to agency IT needs, the Tax Department does not support unifying with ITD.

### **Conclusion**

The committee makes no recommendation regarding the study of IT unification. The committee concluded while there are hardware, software, and process improvements that may need monitoring, the process of transferring FTE IT positions through the IT unification process has been thoroughly studied for multiple years and there may no longer be a need to study IT unification.

## **STUDY OF GOVERNMENT CYBERSECURITY**

### **Background**

Pursuant to Section 15 of Senate Bill No. 2021 (2021), the committee studied the costs incurred by ITD to deliver core technology services and cybersecurity services to state agencies and political subdivisions. The study included a review of the feasibility and desirability of political subdivisions paying their share of the cost of these services.

### **2019-20 Interim**

The 2019-20 Information Technology Committee received information from ITD regarding cybersecurity and minimum-security requirements for state and political subdivisions using the statewide technology access for government and education network (STAGEnet). The department reported efforts were being made to establish 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 department formed a cybersecurity steering committee for state agencies and political subdivisions, which was expected to 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. Concerns related to cybersecurity compliance from political subdivisions were addressed in House Bill No. 1314 (2021). The bill requires political subdivisions to report cybersecurity incidents to ITD.

### **Cybersecurity Funding**

The 2021 Legislative Assembly added \$19,486,225 for ITD cybersecurity initiatives for the 2021-23 biennium, of which \$6,500,000 is considered one-time funding from the federal Coronavirus Relief Fund and \$12,986,225 is considered ongoing funding from the general fund and ITD operating service fund. The Legislative Assembly also

authorized the addition of 29 FTE cybersecurity positions, 17 of which relate to state cybersecurity and 12 FTE positions to local cybersecurity. Of the total, 23 FTE cybersecurity positions are funded from the general fund and 6 of the local FTE cybersecurity positions are funded from the ITD operating fund. Additional cybersecurity funding approved for the 2021-23 biennium is as follows:

	<b>FTE Positions</b>	<b>General Fund</b>	<b>Special Funds</b>	<b>Federal Funds</b>	<b>Total</b>
Salaries and wages	29.00	\$5,840,142	\$1,523,515	\$0	\$7,363,657
Operating expenses		5,251,534	240,000	6,500,000	11,991,534
Capital assets		131,034	0	0	131,034
<b>Total</b>	<b>29.00</b>	<b>\$11,222,710</b>	<b>\$1,763,515</b>	<b>\$6,500,000</b>	<b>\$19,486,225</b>

In addition to funding added by the 2021 Legislative Assembly, ITD's 2021-23 biennium base budget included \$5.8 million for cybersecurity-related salaries and wages, of which \$2.3 million is from the general fund and \$3.5 million is from special funds, for 20 FTE cybersecurity positions and 3 temporary positions. A total of 49 FTE cybersecurity positions are authorized for the 2021-23 biennium.

## **Information Technology Department**

### **Cybersecurity Services**

The committee received testimony from ITD regarding government cybersecurity, including ITD cybersecurity services provided to state agencies and political subdivisions, the cost and percentage share of cybersecurity services provided to state agencies and political subdivisions, and information regarding cybersecurity targets, threats, concerns, and breaches in state agency and political subdivisions systems. The testimony indicated:

- ITD provides network, data center, endpoint, administrative, and informative cybersecurity services to unified agencies.
- ITD provides most network, data center, endpoint, administrative, and informative cybersecurity services to nonunified agencies but does not provide administrative risk assessment services, and partially provides data center zero trust services, vulnerability management endpoint services, and endpoint detection and response services.
- ITD provides network services to cities, counties, school districts, and higher education institutions, some endpoint and administrative services, and no data center and informative cybersecurity services.
- ITD provides services to schools to help secure K-12 data to the extent possible, including endpoint detection and response services, cybersecurity awareness training for staff, and vulnerability management services to allow staff to scan devices and identify concerns.
- ITD's desired cybersecurity status is to unify all state agencies and to provide network, endpoint, and administrative cybersecurity services to state agencies, cities, counties, school districts, and higher education institutions; except administrative risk assessment services and data loss prevention informative services would continue to be provided only to state agencies. Data center services would continue to be provided only to state agencies.
- Other cybersecurity services provided by ITD include cybersecurity training, threat hunting services, system risk assessments, dark web monitoring, and cyber governance policies for the secure implementation of systems.
- On a 5-point scale, cybersecurity capabilities and maturity are measured at 1.91 for state agencies, 1.05 for counties, 0.97 for schools, and 0.76 for cities, compared to a goal of 3.7 for all entities.
- ITD's projected cybersecurity expenses for the 2021-23 biennium are \$27.1 million, of which \$8.4 million is for endpoint detection and response, \$4.1 million is for vulnerability management, \$1.4 million is for cybersecurity awareness and training, \$9.2 million is for cybersecurity monitoring, and \$4.0 million is for cybersecurity risk management.
- The state chose not to renew its cybersecurity insurance policy beginning in July 2021, due to significantly increased premium costs.
- ITD has statutory authority to regulate state agency and political subdivision activity on STAGEnet, but that authority rarely has been used due to complaints from political subdivisions, leading to difficulties regulating political subdivision activity on STAGEnet.
- ITD is considering requesting the 2023 Legislative Assembly consider legislation regarding cybersecurity requirements to access STAGEnet and cybersecurity concerns of boards and commissions that maintain citizen data.

## **Cybersecurity Requirements**

The committee received testimony from ITD regarding the ability of the state to defend against cybersecurity attacks, the status of state and local government cybersecurity infrastructure and capacity, including STAGEnet cybersecurity requirements for state agencies and political subdivisions, the effects of House Bill No. 1314 (2021), and a list of North Dakota state and local government ransomware attacks known to the public. The testimony indicated:

- House Bill No. 1314 has allowed for additional cybersecurity communication between ITD and counties, cities, and schools.
- ITD manually evaluated 49,775 cybersecurity incidents in 2021, of which 6 were reported on a form developed as a result of House Bill No. 1314.
- ITD may request additional funding from the 2023 Legislative Assembly for cybersecurity initiatives, the development of new unified architecture, and expanded support for boards and commissions.

## **Cybersecurity Funding Alternatives**

The committee received testimony from ITD regarding revenue received from state agencies and political subdivisions for IT services, potential alternative cybersecurity funding sources, and any proposed legislation needed related to political subdivisions potentially paying their share of the cost of government cybersecurity. The testimony indicated:

- Nearly all counties, cities, and school districts cooperate and collaborate with ITD regarding IT services and cybersecurity policy.
- Approximately 5 percent of cybersecurity service fee revenue collected by ITD is from political subdivisions.
- It is unknown what metric should be used to allocate government cybersecurity costs to state agencies compared to political subdivisions. Potential metrics include the number of agencies, counties, cities, universities, and schools; network connections or endpoints managed by each organization; total data hosted; risk assessments; training; or other cybersecurity policies.
- Potential funding sources for government cybersecurity include the general fund, foundation aid stabilization fund, state aid distribution fund, or funding from public-private partnerships.

## **Memorandums of Understanding**

The committee received testimony from ITD regarding memorandums of understanding entered as a result of House Bill No. 1417 (2021), which amended Section 54-59-05. The testimony indicated:

- The state has entered memorandums of understanding with the Mandan, Hidatsa, and Arikara (MHA) Nation and joined a joint-state cybersecurity operation center with South Dakota, Montana, Kansas, and New Jersey.
- The goal of the agreement with MHA Nation is to provide antivirus services, vulnerability analysis on software, and cybersecurity awareness training to reduce phishing attacks.
- The joint-state cybersecurity operation center agreement will provide opportunities for collaboration and sharing of best practices between states when preparing for cybersecurity threats.
- ITD is considering requesting the 2023 Legislative Assembly amend Section 54-59-05 to allow ITD to provide optional services to tribal governments to prevent cybersecurity threats instead of allowing ITD only to assist tribal governments after a cybersecurity incident has occurred.

## **Political Subdivisions**

The committee received testimony from the following political subdivisions and their associations regarding cybersecurity services provided by ITD, cybersecurity needs, the feasibility of paying for the local share of government cybersecurity services, and any preventative cybersecurity threat controls implemented, such as multifactor authentication or zero trust security procedures.

### **Ward County**

- Employs 4 FTE IT positions and supports 280 end users and 340 exchange email accounts.
- Collaborates with ITD for various IT and cybersecurity services, including desktop and server operating system critical updates; application updates; troubleshooting of state-owned applications; installation and administration of antimalware, firewall, access control policies, and other policies; employee onboarding; and end user training.
- Collaborates with other county IT departments to share cybersecurity policies and best practices.

## **City of Fargo**

- Receives various IT and cybersecurity services from ITD, including access to STAGEnet, Interactive Video Network video conference, next generation firewall services, antivirus scanning, malware detection, sandboxing of unknown attachments, dark web motioning services, and installation of equipment to protect against distributed denial of service attacks.
- Utilizes multifactor authentication for all city external Internet connections and maintains its firewall and applications between STAGEnet and the City of Fargo production networks to provide local control and additional protection against cybersecurity attacks.
- Evaluates risk, cost, and impact on time and staff resources before implementing cybersecurity tools.
- Is willing to discuss the feasibility of paying for the local share of government cybersecurity costs.

## **Bismarck Public Schools**

- Provides technology services for 13,468 students and 2,247 employees, including classroom and administrative technology, network and security services, and infrastructure and support technology.
- Provides user awareness training and establishes policies, standards, and safeguards to increase cybersecurity education of students and staff and promote cybersecurity best practices.
- Works with ITD by utilizing STAGEnet; implementing systems, applications, and user protections; sharing firewall technology for antivirus scanning and protection against distributed denial of service attacks; using ITD systems and dark web monitoring services and endpoint protection services; and sharing information.
- Obtains cybersecurity insurance through the North Dakota Insurance Reserve Fund.

## **North Dakota Association of Counties**

- NRG Technology Services is a for-profit entity created by the North Dakota Association of Counties (NDAoC) more than 30 years ago to provide IT services, such as network and equipment replacement services, to counties and other organizations.
- NRG Technology Services provides IT services for 32 counties while the remaining counties employ IT staff or hire a third-party provider for IT services.
- NRG Technology Services and ITD often work together to provide IT services to counties.
- Despite ITD providing certain cybersecurity services or products at discounted or at no cost, some counties are not interested in receiving those services because there is concern the additional services will require too much time and effort from county staff.
- Because some counties do not accept cybersecurity services from ITD when the services are provided at no cost, counties likely would not support the state requiring counties to pay the local cost of government cybersecurity services.

## **North Dakota League of Cities**

- Providing IT and cybersecurity services to the 356 cities in the state is challenging when city populations range from large populations in Fargo and Bismarck to a population of one person in Ruso.
- Eight cities employ IT staff and each of those cities collaborate with ITD for cybersecurity services.
- Some cities receive IT services from NRG Technology Services.
- Because city government resources can be limited and most cities do not have dedicated IT staff, it may not be feasible for cities to pay the local cost of government cybersecurity services.

## **Conclusion**

The committee makes no recommendation related to the study of government cybersecurity.

## **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 2021-22 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. Testimony submitted by ITD indicated of the 66 projects in an initiating, planning, executing, transitioning, or closing project stage during the 2<sup>nd</sup> quarter of 2022:

- The total budgeted costs for all projects is \$500.7 million and the combined budget variance for all projects was \$14.4 million below budget.
- No projects exceeded the 20 percent budget variance threshold and all projects were in "green" budget status.
- 5 projects exceeded the 20 percent schedule variance threshold and were in "red" schedule status.
- The 5 projects in red schedule status were the Bank of North Dakota's Dynamics One Stop Shop project, DOCR's electronic medical records project, the Attorney General's midwest automated finger information system network and automated biometric identification system project, ITD's enterprise service management service catalog 3 project, and DPI's statewide automated reporting system infrastructure project.

## **Department of Trust Lands Information Technology Project**

The committee received testimony from DTL regarding the department's IT project pursuant to Section 5 of Senate Bill No. 2013 (2021). The 2017 Legislative Assembly appropriated \$3.6 million for an IT system replacement project. The IT system being replaced 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 testimony indicated:

- DTL continued the entire \$3.6 million of special funds appropriated for the project during the 2017-19 biennium into the 2019-21 biennium, of which approximately \$2.2 million was spent during the 2019-21 biennium and \$1.4 million was continued into the 2021-23 biennium.
- DTL anticipates spending \$3.6 million on the project during the 2021-23 biennium, of which \$1.4 million is funding continued from prior bienniums, \$1.6 million is from special funds appropriated by the 2021 Legislative Assembly, and \$600,000 is from special funds available pursuant to continuing appropriation authority.
- Funding for the 2021-23 biennium is to complete the land management portion of the project, which is separated into a surface project and a minerals project. The surface project was completed in November 2021 and the minerals project was expected to be completed in October 2022.
- DTL anticipates requesting approximately \$80,000 for enhancements to the financial management, accounting, and land management software during the 2023-25 biennium.
- DTL entered a 5-year agreement with a vendor for maintenance of the department's IT systems after the project is complete.

## **Information Technology Department - Statewide Interoperable Radio Network**

The committee received testimony from ITD regarding the statewide interoperable radio network (SIRN) project, which consists of three phases. Phase 1 relates to the SIRN core, console replacements, and public safety answering points (PSAPs) and is separated into four groups based on PSAP geographic location. Phase 2 relates to the SIRN network, towers, radio frequency, and mobile radio coverage, and includes two groups--one for state towers and one for leased towers. Phase 3 relates to SIRN devices and radios.

The department was appropriated \$132.3 million for the SIRN project for the 2019-21 biennium, of which \$12.3 million was ongoing funding from the SIRN fund, \$20 million was from the strategic investment and improvements fund, \$80 million was from a Bank of North Dakota line of credit, and \$20 million from Bank profits. The Bank profits transfer could not be made until ITD spends \$25 million of the line of credit. The line of credit was authorized for 6 years, but the transfer of Bank profits only could be completed during the 2019-21 biennium.

### **Funding**

The testimony indicated:

- ITD was unaware the Bank profits transfer was limited to the 2019-21 biennium and did not spend funding from the line of credit during the 2019-21 biennium.
- ITD anticipates requesting additional funding from the 2023 Legislative Assembly, including funding to replace the \$20 million of Bank profits appropriated for ITD for the 2019-21 biennium which was not used.
- Through September 2022, ITD has accessed \$20 million of the \$80 million Bank line of credit.

- Due to the COVID-19 pandemic and supply chain issues, ITD anticipates the SIRN project will be over budget and delayed, resulting in an estimated completion date of 2026.

### Network, Towers, and Radios

The testimony indicated:

- The majority of PSAPs have converted to new Motorola consoles compatible with SIRN, with the remaining individual and multicounty PSAPs scheduled to convert by the end of 2022 and the State Radio PSAP scheduled to convert in 2024.
- Group 1 of Phase 2 consists of 82 tower sites. The group 1 towers are expected to provide 95 percent radio coverage with 95 percent reliability.
- Between 135 and 138 towers will be included in SIRN, of which the state owns 45 towers. The state incurs lease expenses for the privately owned towers.
- Through April 2022, 4,856 of an estimated 20,000 radios have been purchased by local public safety agencies and \$7.25 million of an estimated \$30 million of reimbursement requests have been submitted by these agencies for the state's \$1,500 cost-share responsibility for each radio.
- ITD anticipates most local public safety agencies will purchase radios in 2023 and 2024.

### Operating and Maintenance Costs, Future Network Governance, and Revenue

The testimony indicated:

- ITD anticipates the ongoing biennial maintenance cost of SIRN will be \$20 million after completion of the project, excluding radio maintenance and local PSAP maintenance costs. The estimated system and network maintenance cost for the 2023-25 biennium is \$17.5 million.
- ITD anticipates utilizing funding available in the SIRN fund, which collects approximately \$4.5 million annually from a \$0.50 fee imposed on assessed communication services, to pay a portion of the maintenance costs and line of credit repayments.
- The estimated operating expenses for the network are approximately \$6.4 million to \$9.3 million during fiscal years 2023, 2024, and 2025, as follows:

Operating Expenses	Fiscal Year 2023	Fiscal Year 2024	Fiscal Year 2025	Total
Network connectivity	\$1,300,000	\$1,370,000	\$1,550,000	\$4,220,000
Tower leasing costs	3,200,000	4,520,000	4,900,000	12,620,000
Labor costs	1,100,000	1,320,000	1,380,000	3,800,000
Vendor maintenance	840,000	1,010,000	1,470,000	3,320,000
Total estimated expenses	\$6,440,000	\$8,220,000	\$9,300,000	\$23,960,000

- The estimated amount available in the SIRN fund from previous bienniums through the end of the 2023-25 biennium for ongoing maintenance costs is approximately \$32 million. Estimated expenditures through the 2023-25 biennium total approximately \$36.3 million, of which \$6.5 million is for ongoing maintenance costs through the remainder of the 2021-23 biennium, \$17.5 million of ongoing maintenance costs for the 2023-25 biennium, and \$12.3 million of principal and interest payments and risk costs through the 2023-25 biennium.
- ITD anticipates requesting an additional \$4.3 million from the 2023 Legislative Assembly to pay the remaining costs but if the variable interest rate on the line of credit continues to increase, additional interest will accrue on the outstanding balance, resulting in more funding requested for repayments.
- A summary of estimated ongoing SIRN operating revenue and expenses is as follows:

Revenue or Expense Description	Estimated Revenues or Expenses
Available funding in the SIRN fund as of September 2022	\$18,500,000
Estimated additional 911 fee revenue during fiscal years 2023, 2024, and 2025	13,500,000
Total estimated revenue through the 2023-25 biennium available for operating expenses	\$32,000,000
Estimated operating expenses during fiscal years 2023, 2024, and 2025	(\$23,960,000)
Estimated fiscal year 2023 loan interest repayment based on a 4 percent interest rate	(2,200,000)
Estimated fiscal year 2024 loan interest repayment based on a 4 percent interest rate	(3,200,000)
Estimated fiscal year 2025 loan interest repayment based on a 4 percent interest rate	(5,900,000)
Risk contingency for additional operating expenses that may be incurred	(1,000,000)
Total estimated expenses	(\$36,260,000)
Estimated expenses exceeding estimated revenues	(\$4,260,000)

## 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.

After the conclusion of the committee's work, SITAC met in October 2022 and prioritized the following major IT project requests from DTL, Department of Health and Human Services (DHHS), ITD, Workforce Safety and Insurance (WSI), DOT, Secretary of State (SOS), DOCR, JSND, and Department of Water Resources (DWR):

Rank	Agency	Project Name	General Fund Request	Federal Funds Request	Special Funds Request	Total Request
1	DTL	Online payment processing			\$500,000	\$500,000
2	DHHS	Contract management system	\$3,000,000			3,000,000
3	DHHS	Retirement of legacy systems	3,200,000	\$4,800,000		8,000,000
4	ITD	Enterprise digitization	28,452,986		2,519,168	30,972,154
5	WSI	myWSI Releases 7, 8, and 9			1,830,000	1,830,000
6	ITD	K-12 Classlink	1,905,888			1,905,888
7	DOT	Automated vehicle location			2,520,000	2,520,000
8	WSI	Claims and policy System Releases 11, 12, and 13			4,950,000	4,950,000
9	DHHS	Retirement of inpatient electronic health record system - Advanced institutional management software	1,000,000			1,000,000
10	DHHS	Grant management system	2,000,000			2,000,000
11	SOS	Campaign finance system replacement	925,000			925,000
12	DOCR	Strategy planning for offender management replacement	757,000			757,000
13	ITD	Universal vulnerability management project	17,368,614			17,368,614
14	DOT	Security expert door security		865,000		865,000
15	ITD	Enterprise customer relationship management system	11,527,830		501,808	12,029,638
16	JSND	Unemployment insurance system replacement	40,257,896			40,257,896
17	DHHS	Retirement of outpatient electronic health record system - Regional office automated program	1,000,000			1,000,000
18	ITD	Security expert building security system enhancement	2,075,367		591,000	2,666,367
19	DWR	Migration of big data	7,025,952			7,025,952
20	DHHS	Child support case management system replacement	20,000,000	40,000,000		60,000,000
21	DWR	Data engine abstraction	2,260,260			2,260,260
22	DHHS	Criminal background check process automation	1,000,000			1,000,000
23	DWR	File services migration	579,600			579,600
24	DHHS	Procure to pay system	3,000,000			3,000,000
Total			\$147,336,393	\$45,665,000	\$13,411,976	\$206,413,369

## 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 2023-25 biennium. The 2023-25 biennium will focus on closing workforce gaps, enabling decisionmaking, managing risk, and improving citizen and business engagement during the 2023-25 biennium.

### 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 that directive, ITD prepared and presented a report for fiscal year 2021, which included an executive summary, accomplishments, financial metrics and financial statements, and performance measures. The report highlighted the customer success program, improvements to the delivery of IT services, health technology accomplishments, cybersecurity threats and accomplishments, and the records management program.



The final fiscal year 2022 report was not yet available when the committee completed its interim responsibilities but ITD reported to the committee in September 2022 that major objectives that will be noted in the report will include deploying a world-class government experience, securing all government-held data in North Dakota, and delivering the most efficient government services in America.

## **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.

The committee received testimony from ITD regarding the statewide IT plan. The testimony indicated although the deadline for each agency to submit its IT plan to ITD for inclusion in the statewide IT plan was August 15, 2022, some agencies are authorized extensions through September 2022. The department anticipates the statewide IT plan will be published in November or December 2022.

## **EDUCATION INFORMATION TECHNOLOGY**

### **University System**

The committee received testimony from the State Board of Higher Education regarding higher education IT activities pursuant to Sections 15-10-44 and 54-35-15.2. The testimony indicated:

- The Novelution electronic grants administration project is a modular-based electronic grants administration application that will provide a central repository for researchers to monitor projects and improve accuracy. The project was in green status during the 2<sup>nd</sup> quarter of 2022 and was 24.7 percent under budget and 0.1 percent behind schedule compared to the project revised baseline.
- The University of North Dakota's AssetWorks project is being developed to replace the current facilities asset management information system. The project was in the execution phase and in red status during the 2<sup>nd</sup> quarter of 2022 and was 1.5 percent over budget and 18.3 percent behind schedule compared to the project revised baseline. The project was projected to be completed in July 2022 but was rebaselined to be completed in September 2022.
- The University System may request \$1 million from the 2023 Legislative Assembly for ITD endpoint protection software, \$800,000 for a University System security operations center, including 2 FTE security analyst positions, and \$3 million for increasing software contract maintenance costs.

### **Elementary and Secondary Education**

The committee received testimony from EduTech regarding IT initiatives for elementary and secondary education, including accomplishments, future initiatives, the PK-20W Initiative, computer and cybersecurity standards and credentials, public-private partnerships, and EduTech's goal to encourage North Dakota students to become computer science and cybersecurity professionals. 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 testimony indicated:

- By the end of calendar year 2022, EduTech will no longer provide web hosting services to schools due to schools needing more dynamic web hosting services than EduTech can provide.
- EduTech is working with schools to find a different web hosting service to meet the needs within each school's available funding resources.

- EduTech entered a new Microsoft Office 365 licensing partnership with schools to reduce school spending, ensure schools receive necessary services, and improve license renewal efficiencies.

### **INFORMATION TECHNOLOGY COORDINATION OF SERVICES**

Section 54-59-12 provides for the review and coordination of IT among 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 testimony from ITD, the University System, and NDAoC regarding coordination of services. The testimony indicated:

- 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 collaborate to address cybersecurity, financial, human resources, network, distance education, and interactive video network services.
- ITD and political subdivisions collaborate to address network, cybersecurity, SIRS, election systems, 911, clerk of courts, geographic information system, criminal justice information sharing, and health alert network services.

### **DISTRIBUTED LEDGER TECHNOLOGY REPORT**

Pursuant to Section 54-59-02.2, the committee received a report regarding the implementation of distributed ledger technologies. The testimony provided by ITD indicated:

- Of the 87 blockchain projects in state government during the 2021-23 biennium through May 2022, 63 projects (72.4 percent) were in pilot or exploration phases, 16 projects (18.4 percent) were in rolling-out or production phases, and 8 projects (9.2 percent) were no longer active.
- The projects relate to paper credentials, such as transcripts, diplomas, and licenses; web applications and images; machine readable digital credentials, such as digital wallets and backpacks; and job data exchanges, which include publishing job opportunities and qualifications.

### **STATEWIDE LONGITUDINAL DATA SYSTEM INITIATIVE**

Pursuant to Section 54-59-36, the committee received a report from the Statewide Longitudinal Data System Committee on the status of SLDS. The testimony provided by ITD indicated during the 2021-22 interim, the Statewide Longitudinal Data System Committee entered data-sharing agreements with the University System, DHHS, DOT, JSND, DPI, Department of Career and Technical Education, and North Dakota Workforce Council, and is considering entering agreements with the judicial branch and DOCR.

### **DISCLOSED CYBERSECURITY INCIDENTS**

Pursuant to Section 54-59.1-07, the committee received a report regarding all disclosed cybersecurity incidents. The committee received testimony from ITD regarding disclosed cybersecurity incidents, including the status of the cybersecurity incident and any response or remediation to mitigate the cybersecurity incident. The testimony indicated:

- ITD prevents or detects more than 4.5 billion cybersecurity threats on STAGEnet each year.
- Due to the volume of cybersecurity incidents, cybersecurity analyst workload has increased, resulting in staff resignations and the need for additional cybersecurity analysts to reduce the amount of work performed by each analyst.

### **EMERGENCY SERVICES COMMUNICATIONS COORDINATING COMMITTEE**

Pursuant to Section 57-40.6-12, the committee received a report from ESC3 regarding changes to the operating standards for emergency services communications. 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 PSAPs. 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 testimony provided by ESC3 indicated:

- As of September 2022, 40 county and city jurisdictions charge the maximum \$2.00 fee on assessed communication services while 14 jurisdictions charge a \$1.50 fee.
- ESC3 does not anticipate any changes to Chapter 57-40.6 will be recommended to the Legislative Management for the 2023 legislative session.

## **OTHER INFORMATION**

### **Information Technology Security Audits**

#### **2019-21 Biennium**

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, Secure Yeti, to conduct the audits. In March 2021, the committee received testimony from the State Auditor's office and Secure Yeti regarding the 2019-21 biennium security audits. The testimony indicated:

- The purpose of the audit was to assess the security of IT in state government and identify potential vulnerabilities in the state network, systems, and applications.
- The audit revealed 128 vulnerabilities, of which 5 were considered critical risk, 57 were high risk, 33 were medium risk, and 33 were low risk.
- Of the 95 critical, high, and medium risk vulnerabilities, 10 key findings were identified and related to intrusion monitoring, detection, and response; insecure legacy protocols; and insecure password policies; critical University System data center infrastructure not being adequately protected by physical barriers; misconfigured wireless networks; unauthenticated simple mail transfer protocol (email) relay, remote shell, and phishing; externally exposed network resources; patching and configuration management; and the need to display an acceptable use policy for STAGEnet when users access a website or system on STAGEnet.
- ITD and the University System were aware of the vulnerabilities identified in the audit.
- During the audit, ITD and the University System indicated the key findings in the audit report will not require significant network, system, or process changes to mitigate potential risks and vulnerabilities.
- ITD has the resources available to respond to the risks identified in the audit, but there are communication processes and delays between ITD and other agencies that have prevented timely responses to those risks.
- The University System does not have the resources to respond to the risks identified in the audit.

#### **2021-23 Biennium**

House Bill No. 1004 (2021) 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 committee received testimony from the State Auditor's office regarding the status of the IT security audits. The testimony indicated:

- The State Auditor's office has contracted with Secure Yeti to conduct IT reviews of ITD and the University System for the 2021-23 biennium.
- The reviews are estimated to be completed before the 2023 legislative session.
- Completion of the IT reviews has been delayed due to communication and network access delays from ITD.

### **Information Technology Department Budget**

#### **Infrastructure Investment and Jobs Act Funding**

The committee received testimony from ITD regarding federal funding available to North Dakota for state and local government cybersecurity as a result of the federal Infrastructure Investment and Jobs Act (IIJA) and future plans for the funding. The testimony indicated:

- ITD anticipates approximately \$122 million of federal funding may be available as a result of IIJA during the 2021-23 and 2023-25 bienniums, of which \$5 million is for a broadband equity, access, and deployment (BEAD) planning grant program, \$100 million is for the BEAD program which will be distributed to each state for broadband projects, \$500,000 is for a digital equity grant program, and \$16.5 million is for a state and local cybersecurity grant program.
- The state digital equity capacity grant program and state digital equity planning grant program are competitive programs authorized in IIJA for feasibility analysis and planning of broadband infrastructure in underserved areas for which ITD intends to apply when the federal government starts accepting funding applications.
- The middle mile grant program is a competitive program authorized in IIJA for broadband infrastructure deployment available during federal fiscal years 2022 through 2026 for which ITD intends to apply when the federal government starts accepting funding applications.
- The state and local cybersecurity grant program is for providing funding to tribal and local governments and requires a statewide security plan and a security planning committee.

- Of the funding estimated to be available to North Dakota for the state and local cybersecurity grant program, 80 percent must be distributed by the state to local government agencies and at least 25 percent of the 80 percent must be distributed to rural local government agencies.
- The state's matching requirement for the state and local cybersecurity grant program is 10 percent in the 1<sup>st</sup> year and increases 10 percent each year to a total of 40 percent in the 4<sup>th</sup> year, after which time any ongoing operational costs are the responsibility of the state.
- To accept the state and local cybersecurity grant program funding, a lengthy application and cybersecurity plan must be completed and ITD must establish a 50-member planning committee consisting of representatives from the state, counties, cities, and health and education institutions, of which at least one-half of the members must be cybersecurity or IT professionals.
- ITD has concerns the time and resources necessary to accept and distribute the state and local cybersecurity grant program funding may exceed the benefits of the funding, due to the possibility of needing to reallocate department resources from other projects to complete the application, form the planning committee, and distribute the funding.
- Funding available as a result of IJA is in addition to the \$45 million appropriated by the Legislative Assembly during the November 2021 special legislative session from the federal Coronavirus Capital Projects Fund to ITD for broadband infrastructure grants to underserved areas of the state, which was made available as a result of the federal American Rescue Plan Act.

### **2023-25 Biennium Budget Request**

The committee received testimony from ITD regarding legislation ITD may request during the 2023 legislative session and the department's 2023-25 biennium budget request, including a review of maintenance and operations, mainframe, network, server hosting, storage, application hosting, desktop support, technology, Microsoft licensing, telecommunications, and other rates and fees. The testimony indicated:

- Technology requests during the 2023 legislative session may include proposals to address concerns from ITD and state agencies that use ITD services relating to how to close workforce gaps, enabling decisionmaking, managing risk, and improving citizen and business engagement.
- ITD's 2023-25 biennium budget request was not finalized at the conclusion of the committee's work but the request will include a proposal to add 2 FTE positions for the customer success management program to assist agencies with strategic planning, technology research and updates, and communication between ITD and other agencies for collaboration on IT projects and best practices.
- Other potential requests for funding may be for enterprise digitization of aging technologies in multiple state agencies, vulnerability assessment software, DPI and DHHS programs, operational inflationary increases, and requests for additional FTE positions to meet demand from state agencies for IT projects and services.
- Certain enterprise services provided to the majority of executive branch state agencies, such as the customer success management program, could be funded through a general fund appropriation to ITD rather than general fund appropriations to other agencies and a special fund appropriation to ITD to collect funding from the agencies. This change would result in an increase of approximately \$5 million from the general fund in ITD's budget, a decrease of approximately \$5 million from the general fund in other agency budgets, and a decrease of approximately \$5 million from special funds in ITD's budget.

## **Health Information Technology**

### **North Dakota Health Information Network**

The committee received testimony from ITD regarding the continued development of North Dakota Health Information Network (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 includes the establishment of health information network infrastructure, providing medication information and registry connections, and allowing for administrative process automation and simplification.

In Section 1 of Senate Bill No. 2021 (2017), the Legislative Assembly appropriated \$43.6 million for the NDHIN expansion project. Of the amount appropriated to ITD, \$40.5 million was from federal Health Information Technology for Economic and Clinical Health (HITECH) funds distributed by the federal Centers for Medicare and Medicaid Services (CMS) to DHHS. Federal funds were available through a Medicaid advanced planning document and required a 10 or 15 percent match. The matching funds were generated from billings to providers, payers, and from the electronic health information exchange fund.

Funding was projected to be available for the project through the 2021-23 biennium with an anticipated completion date of September 2021; however, due to funding changes made by the federal government, DHHS and ITD anticipate only \$22 million will be received for the project.

### **Health Information Funding and Transfer**

As a result of changes made by the federal government, it was anticipated federal funding for NDHIN will be limited starting in the 2021-23 biennium, as CMS only will match up to 15 percent of funding spent for state health information networks, rather than 85 to 90 percent. The 2021 Legislative Assembly added \$5.5 million of federal funds, resulting in a total of \$6.0 million of federal funds spending authority available to ITD for the Health Information Technology Office for the 2021-23 biennium.

In Section 3 of Senate Bill No. 2021 (2021), the Legislative Assembly identified an additional \$6 million of one-time funding is included in Section 1 of the bill from the health IT planning loan fund, which the Bank of North Dakota is required to transfer, at the request of the CIO, to the electronic health information exchange fund for the purpose of defraying the expenses of the Health Information Technology Office and NDHIN during the 2021-23 biennium. Legislative intent is provided that the funding from the health IT planning loan fund be transferred only to the extent federal funding is not available to defray the expenses of the Health Information Technology Office and NDHIN during the 2021-23 biennium.

The committee received testimony from ITD regarding activities of the Health Information Technology Advisory Committee, NDHIN, and other health IT initiatives, including any transfers from the health IT planning loan fund made pursuant to Section 3 of Senate Bill No. 2021 (2021). The testimony indicated:

- Federal funding available from the HITECH Act expired in September 2021.
- In February 2022, CMS certified NDHIN as a Medicaid management information system, which may allow ITD to request up to 75 percent federal reimbursement for NDHIN expenditures; however, ITD continues to work with CMS regarding the appropriate cost allocation formula for approval of NDHIN expenditure reimbursements.
- When a cost allocation formula is approved by CMS, ITD will be able to submit expenditure reimbursement requests for costs incurred since October 2020 which were not reimbursable with HITECH funding.
- In November 2021, ITD requested the Bank transfer \$3 million of the \$6 million available in the health IT planning loan fund to the electronic health information exchange fund to pay for expenditures of NDHIN and other health IT initiatives until additional federal funding is available. An additional transfer of \$500,000 may be requested before the end of the 2021-23 biennium.

### **Veterans' Home Information Technology**

Section 5 of Senate Bill No. 2007 (2021) amended Section 54-59-05 to exclude IT of the Veterans' Home from the requirement to be provided, supervised, and regulated by ITD. Section 6 of the bill amended Section 54-59-22 to exclude email, file and print administration, database administration, application server, and hosting services of the Veterans' Home from being required to be provided by ITD.

### **Information Technology Department**

The committee received testimony from ITD regarding the status of the Veterans' Home IT and the effect on state and local cybersecurity and STAGEnet as a result of Senate Bill No. 2007. The testimony indicated:

- Any IT changes made pursuant to Senate Bill No. 2007 have the potential to weaken the security of the Veterans' Home and STAGEnet by increasing the frequency of malicious hacking and ransomware attacks.
- The Veterans' Home IT programs do not have vulnerability mitigation software and have less antivirus software coverage than would be provided by ITD.
- If an agency is not required to comply with ITD network standards or uses an alternative network solution instead of STAGEnet, there is a security risk to other state agencies and political subdivisions when communicating with the agencies on STAGEnet because ITD does not have access to that agency's network activity.
- If an agency uses an alternative network to STAGEnet and a cybersecurity incident occurs, ITD's response time is approximately 24 hours instead of 15 minutes.

### **Veterans' Home**

The committee received testimony from the Veterans' Home regarding IT initiatives and activities undertaken as a result of changes made in Senate Bill No. 2007 and the agency's plans for IT and cybersecurity services during the 2021-23 biennium, including costs associated with those services. The testimony indicated the Veterans' Home has chosen to continue receiving IT and cybersecurity services from ITD for the 2021-23 biennium to avoid purchasing additional computers and Microsoft Office 365 licenses and having to host a private email server that may not integrate with state systems.

### **Legislative Branch Information Technology**

The committee received testimony from the Legislative Council regarding the status of the legislative branch IT expansion approved in Senate Bill No. 2001 (2021). The testimony indicated:

- Through August 2022, of the 8 FTE IT positions added by the 2021 Legislative Assembly, 7 FTE positions have been filled, including 4 FTE developer positions, 2 FTE administrator positions, and 1 FTE IT specialist position.
- The legislative branch website is being redesigned with an estimated deployment date in October 2022.
- The Legislative Council IT staff have migrated all Legislative Council staff from the nd.gov email tenant to the ndlegis.gov email tenant and are migrating members of the Legislative Assembly.
- The migration of legislator email accounts is approximately 9 months behind schedule due to communication delays and collaboration issues from ITD.
- Hardware was purchased earlier this year but was not useable for multiple months due to network access delays from ITD.

### **Records Management**

The committee received testimony from ITD regarding state records management requirements of Chapter 54-46. Section 54-46-03 establishes the CIO or an individual designated by the CIO to serve as the State Records Administrator who is responsible for establishing and administering the records management program for the executive branch, including the efficient and economical creation, utilization, maintenance, retention, and final disposition of state records. The testimony indicated:

- A records retention schedule is maintained in the executive branch records management system, which consists of the general schedule that contains retention policies for records commonly used by all executive branch state agencies as well as agency-specific records retention schedules.
- A records management task force consisting of the State Archivist, State Auditor, Attorney General, and State Records Administrator approve changes to records retention schedules and are responsible for reviewing historical, fiscal, and legal values to record series submitted by executive branch state agencies.
- Each year, executive branch agencies must report and certify to the State Records Administrator certain records have been disposed of according to retention requirements on the general schedule and agency-specific schedules; however, the task force does not review the content of records being disposed.
- Email by itself is not a record but the data contained in the email may be considered a record.
- Email records are classified under electronic communications on the general schedule but due to recent events regarding the deletion of emails, the records management task force is working to update the electronic communications policy.
- Because state agencies are the owners of record data, each agency is responsible for content review of records being disposed.
- When agencies are disposing of records, it is not yet possible to have a program that would search all record content to determine if certain records should be maintained.
- When an executive branch state employee terminates employment and the state agency requests the former employee's email account be deleted, Microsoft's policy provides there are 30 days available to review data in the email account before the account is permanently deleted.

# INTERIM HOUSE APPROPRIATIONS COMMITTEE

The Chairman of the Legislative Management appointed an Interim House Appropriations Committee and assigned the committee the following duties:

- Review proposals to use funding from the federal State Fiscal Recovery Fund established through the federal American Rescue Plan Act of 2021 and develop recommendations for the use of funds.
- Review legislative appropriations from the federal Coronavirus Capital Projects Fund and recommend any necessary changes to existing appropriations from the fund and develop recommendations regarding the use of any remaining available funding.
- Consider any other budget adjustments requiring legislation that are necessary before the 2023 regular legislative session.

Committee members were Representatives Jeff Delzer (Chairman), Bert Anderson, Larry Bellew, Tracy Boe, Mike Brandenburg, Michael Howe, Keith Kempenich, Gary Kreidt, Bob Martinson, Lisa Meier, Alisa Mitskog, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Mark Sanford, Mike Schatz, Jim Schmidt, Randy A. Schobinger, Michelle Strinden, and Don Vigasaa.

## STATE FISCAL RECOVERY FUND

### Background

The American Rescue Plan Act of 2021 included \$219.8 billion for the State Fiscal Recovery Fund. Of this amount, \$195.3 billion is available to the states, \$25.5 billion will be distributed equally to the states and the District of Columbia, resulting in \$500 million allocated to each state. After an additional \$755 million is distributed to the District of Columbia, the remaining \$169 billion will be distributed to the states based on each state's share of seasonally adjusted unemployed persons for the 3-month period ending December 2020. North Dakota's allocation from the State Fiscal Recovery Fund is \$1,007,502,515. The funds have been received and are on deposit in the Bank of North Dakota.

### Allowable Uses

Allowable uses of funding from the State Fiscal Recovery Fund, which must be obligated by December 31, 2024, and spent by December 31, 2026, are as follows:

- Costs related to the Coronavirus (COVID-19) pandemic, including assistance to households, small businesses, nonprofits, and affected industries, such as tourism, travel, and hospitality;
- Provide premium pay of up to \$13 per hour in addition to base pay, up to a maximum of \$25,000, to state, territory, or tribal government workers who perform essential work during the COVID-19 pandemic, or provide grants to employers with employees who perform essential work, which is defined as work needed to maintain continuity of operations of critical infrastructure and other sectors designated by the Governor as critical to protect the health and well-being of residents;
- The cost of providing government services to the extent there was lost revenue as a result of the COVID-19 pandemic; and
- Investment costs in water, sewer, and broadband infrastructure.

States may not use the funding to reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which funds received have been spent or returned. States cannot use funds to make payments to pension plans. The Office of Management and Budget submitted \$1.8 billion of revenue loss as of December 2020; therefore, the funds should be able to be used for the cost of government services.

## FEDERAL CORONAVIRUS CAPITAL PROJECTS FUND

### Background

The American Rescue Plan Act of 2021 appropriated \$10 billion to the United States Department of the Treasury for a Coronavirus Capital Projects Fund to provide payments to states, territories, freely associated states, and tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19)."

North Dakota received an initial allocation of \$112,473,563 from the Coronavirus Capital Projects Fund. North Dakota's allocation was later increased to \$113,276,228. The Legislative Assembly, based on initial information provided regarding the fund, approved using \$106,474,000 of the funding for the following projects for the 2021-23 biennium:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Department of Career and Technical Education	Statewide area career center initiative grant program	70,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total - 2021-23 appropriations		\$106,474,000

### Eligible Uses Based on September 2021 Guidance

The September 2021 guidance provides grant funds may be used for critical capital projects that directly enable work, education, and health monitoring in response to COVID-19. To be eligible for funding, a project must meet all of the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring;
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. The capital project is designed to address a critical need of the community to be served by it.

### PROPOSALS RECEIVED

The committee reviewed proposals from members of the Legislative Assembly and the Governor for the use of federal American Rescue Plan Act funds and for other budget adjustments as detailed in this section.

#### Federal Coronavirus Capital Projects Fund

The committee reviewed a proposal to adjust the funding source of certain projects that received an appropriation from the federal Coronavirus Capital Projects Fund during the 2021 regular legislative session. The proposal would change the funding source of nine projects from the fund to federal state fiscal recovery funds.

Agency	Description	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total		\$36,474,000

#### Federal State Fiscal Recovery Funds

The committee reviewed 156 proposals to use federal state fiscal recovery funds as follows:

Category	Proposals Received
Infrastructure	The committee reviewed 15 proposals to use federal state fiscal recovery funds for infrastructure projects, including natural gas pipelines, roads, water control, and other projects.
Aid to political subdivisions	The committee reviewed 33 proposals to use federal state fiscal recovery funds to provide aid to political subdivisions for road and bridge projects, local park district infrastructure projects, water and sewer projects, and other purposes.
Capital improvements	The committee reviewed 34 proposals to use federal state fiscal recovery funds for capital projects for state agency and institution building projects, deferred maintenance, and other purposes.
Information technology	The committee reviewed 19 proposals to use federal state fiscal recovery funds for information technology projects, including cybersecurity enhancements, state agency software projects, and other purposes.



Category	Proposals Received
Economic development	The committee reviewed 29 proposals to use federal state fiscal recovery funds for economic development, including research programs, workforce initiatives, business incentives, and other purposes.
Other proposals	The committee reviewed 26 proposals to use federal state fiscal recovery funds for other purposes, including human service programs, long-term care facility assistance, child care programs, and other purposes.

### Other Budget Adjustments

The committee reviewed 27 proposals for other budget adjustments. The proposals included adjustments to federal spending authority for agencies, the authorization of new full-time equivalent (FTE) positions, additional authority to allow for the distribution of federal local fiscal recovery funds, and other purposes.

## COMMITTEE RECOMMENDATIONS

### Bill Draft 21.1104.06000

The committee recommends a bill draft [\[21.1104.06000\]](#) to appropriate \$509,150,228 of federal COVID-19 relief funding, of which \$113,276,228 is from the federal Coronavirus Capital Projects Fund, \$383,474,000 is from the federal State Fiscal Recovery Fund, and \$12,400,000 is from the federal Coronavirus Relief Fund to various state agencies, as follows:

Federal Coronavirus Capital Projects Fund		
Agency	Description	Federal Funds
Department of Career and Technical Education <sup>1</sup>	Section 1 - Statewide area career center initiative grant program for career academies	\$50,000,000
Information Technology Department	Section 8 - Broadband infrastructure grants to providers to expand coverage and ensure reliable high-speed broadband Internet to all addresses in the state	63,276,228
Total		\$113,276,228

<sup>1</sup>House Bill No. 1015 (2021) provided \$70 million from the federal Coronavirus Relief Fund to the Department of Career and Technical Education for career academies. Section 1 of the bill draft would provide a total of \$80 million for this purpose, of which \$50 million is from the federal Coronavirus Capital Projects Fund and \$30 million is from the federal State Fiscal Recovery Fund.

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Department of Career and Technical Education <sup>1</sup>	Section 1 - Statewide area career center initiative grant program	\$30,000,000
Department of Public Instruction	Section 1 - Grant to a children's science center project to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	5,900,000
University of North Dakota	Section 1 - Funding to reconstruct the University of North Dakota apron at Grand Forks International Airport to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	5,000,000
Dickinson State University	Section 1 - Funding for Dickinson State University projects, including a Pulver Hall project, a meat processing laboratory remodel, and other projects to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	4,000,000
Highway Patrol	Section 1 - Funding for a Law Enforcement Training Academy Center to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	3,000,000
Office of Management and Budget	Section 1 - Medical center grant to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	500,000
Judicial branch	Section 1 - Information technology equipment to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1015 (2021)	157,600
State Historical Society	Section 2 - Historic site deferred maintenance to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1018 (2021)	4,200,000
Parks and Recreation Department	Section 3 - State park deferred maintenance and essential infrastructure to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	7,900,000
Parks and Recreation Department	Section 4 - State park capital improvements to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	816,400

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Parks and Recreation Department	Section 5 - Funding for the International Peace Garden to replace funding from the federal Coronavirus Capital Projects Fund in House Bill No. 1019 (2021)	3,000,000
Agriculture Commissioner	Section 6 - Intermodal facility construction grant program to replace funding from the federal Coronavirus Capital Projects Fund in Senate Bill No. 2245 (2021)	2,000,000
Department of Transportation	Section 7 - State road and bridge projects (\$200 million), to improve county bridges (\$50 million), for allocations to counties based on the highway tax distribution formula (\$50 million), and for allocations to townships (\$17 million), which was appropriated in House Bill No. 1395 (2021)	317,000,000
Total		\$383,474,000
<sup>1</sup> House Bill No. 1015 (2021) provided \$70 million from the federal Coronavirus Relief Fund to the Department of Career and Technical Education for career academies. Section 1 of the bill draft would provide a total of \$80 million for this purpose, of which \$50 million is from the federal Coronavirus Capital Projects Fund and \$30 million is from the federal State Fiscal Recovery Fund.		

Federal Coronavirus Relief Fund		
Agency	Description	Federal Funds
Department of Human Services	Section 9 - Payroll expenses	\$4,400,000
Department of Corrections and Rehabilitation	Section 9 - Payroll expenses	7,000,000
Adjutant General	Section 9 - Payroll expenses	1,000,000
Total		\$12,400,000

#### Bill Draft 21.1130.03000

The committee recommends a bill draft [\[21.1130.03000\]](#) to appropriate funding to the State Treasurer, Attorney General, Department of Human Services, Retirement and Investment Office, and Department of Public Instruction; transfer Bank of North Dakota profits to the University of North Dakota; authorize 16 FTE Department of Human Services positions; provide Department of Human Services transfer authority; and authorize 6 FTE Retirement and Investment Office positions, as follows:

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Department of Public Instruction	Section 16 - Information technology project upgrades in lieu of withholding state school aid from school districts not eligible for federal Elementary and Secondary School Emergency Relief (ESSER) funding allocations	\$100,000
Total		\$100,000

Other Fiscal Items			
Agency	Description	Special Funds	Federal Funds
State Treasurer	Section 1 - Provides additional appropriation authority to the State Treasurer to distribute funding from the federal Local Fiscal Recovery Fund to cities, to provide a total of \$53,174,975 appropriated to the State Treasurer for this purpose	\$0	\$3,014,975
University of North Dakota	Section 2 - Transfers Bank of North Dakota profits to the University of North Dakota for campus network upgrades	750,000	0
Attorney General	Section 3 - Funding from the Attorney General refund fund for State Crime Laboratory salary equity increases	537,297	0
Department of Human Services	Section 4 - Authorizes 16 FTE positions for the Department of Human Services	0	0
Department of Human Services	Section 5 - Appropriates federal funding due to the increased federal medical assistance percentage (FMAP) and provides the department an exemption to use up to \$16 million of any general fund savings to address any decreases in the regular FMAP rate	0	79,600,000
Department of Human Services	Section 6 - Medicaid postpartum coverage	0	600,000

Other Fiscal Items			
Agency	Description	Special Funds	Federal Funds
Department of Human Services	Section 7 - Lifespan respite care program	0	386,690
Department of Human Services	Section 8 - Vulnerable adult protection services program	0	1,936,350
Department of Human Services	Section 9 - Supplemental nutrition assistance program verification database	0	239,558
Department of Human Services	Section 10 - Children and Family Services transition program	0	1,168,347
Department of Human Services	Section 11 - Provides line item transfer authority to the Department of Human Services for House Bill Nos. 1394 and 1395 (2021)	0	0
Department of Human Services	Section 12 - Funding for the State Hospital	0	200,000
Department of Human Services	Section 13 - Money follows the person capacity program	0	5,000,000
Department of Human Services	Section 14 - Randolph Sheppard vocational rehabilitation program	0	22,663
Retirement and Investment Office	Section 15 - Authorizes 6 new FTE positions and appropriates funding for salaries and operating expenses	1,806,862	0
Department of Public Instruction	Section 16 - Funding from state school aid withholding for information technology upgrades	10,000,000	0
Total		\$13,094,159	\$92,168,583

### Bill Draft 21.1137.01000

The committee recommends a bill draft [\[21.1137.01000\]](#) to appropriate \$570,035,705 from the federal State Fiscal Recovery Fund, included in Section 1 of the bill, as follows:

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
Industrial Commission	Pipeline infrastructure to transport natural gas from western to eastern North Dakota	\$150,000,000
Industrial Commission	Abandoned oil well conversion to water supply grant program to convert abandoned wells to livestock freshwater supply wells for permanent drought resiliency	3,200,000
Department of Water Resources	Water projects with \$50 million used to replace funding from the resources trust fund for current projects	75,000,000
Department of Corrections and Rehabilitation	Stipends to county jails for costs to house inmates sentenced to the department but deferred admission due to the pandemic	4,800,000
Parks and Recreation Department	Grants to local park districts to renovate and upgrade existing outdoor facilities with a maximum of \$1.5 million per park district and a 1-to-1 matching requirement	5,000,000
North Dakota State University Main Research Center	Capital projects, including \$446,000 for projects at the Carrington Research Extension Center (REC), \$1,963,000 at the Central Grasslands REC, \$3,420,000 at the Hettinger REC, and \$2,200,000 at the Dickinson REC	8,029,000
State Department of Health	Public health laboratory project	15,000,000
Department of Corrections and Rehabilitation	Free through recovery program for capacity increase, wait time reduction, recidivism reduction, and to improve outcomes	2,995,200
Parks and Recreation Department	State park deferred maintenance or small capital projects with each of the 13 state parks receiving a minimum of \$100,000	10,000,000
Office of Management and Budget	Critical maintenance projects	10,000,000
Office of Management and Budget	Human resources transformation initiative	
Office of Management and Budget	Heating, ventilation, and air conditioning improvements to the legislative chambers and Brynhild Haugland Room	7,000,000
State Historical Society	Essential infrastructure at historic sites	950,000
State Board of Higher Education	High performance computing at North Dakota State University	2,200,000

Federal State Fiscal Recovery Fund		
Agency	Description	Federal Funds
State Board of Higher Education	Higher education capital projects, including \$25 million for Hartnett Hall at Minot State University, \$50 million for Merrifield Hall at the University of North Dakota, and \$38 million for a polytechnic building at Bismarck State College	113,000,000
State Board of Higher Education	Equipment and personnel for hyperbaric oxygen therapy at the University of North Dakota School of Medicine and Health Sciences	2,104,121
State Board of Higher Education	Dakota Digital Academy	475,000
Attorney General	Establishment of a missing persons database	75,000
Attorney General	Replacement of the prosecuting case management system	1,000,000
Information Technology Department	Funding for radios compatible with the statewide interoperable radio network, including \$2,612,000 for the Highway Patrol and \$2,057,384 for the Department of Corrections and Rehabilitation	4,669,384
Information Technology Department	Grant to the North Dakota Stockmen's Association for the conversion of a paper-based brand inspection program to an electronic system	401,000
Adjutant General	State active-duty software replacement project	450,000
Judicial branch	Supreme Court docket system replacement project	2,020,000
Office of Administrative Hearings	Development of a web-based document management system	20,000
Department of Human Services	Retention bonuses for direct service professionals serving clients with intellectual or developmental disabilities	2,500,000
Department of Human Services	Funding for long-term care facilities, including nursing facilities (\$20.8 million), basic care facilities (\$2.95 million), and assisted living facilities (\$1.25 million)	25,000,000
Department of Human Services	Funding for western North Dakota behavioral health (\$4 million), child care services (\$17 million), Medicaid eligibility system upgrades (\$5 million), and substance use disorder treatment voucher system grants (\$3 million)	29,000,000
Department of Human Services	North Dakota Pregnancy Resource Network	1,500,000
Adjutant General	Camp Grafton housing enhancements	2,000,000
Department of Veterans' Affairs	Grant to assist in the construction of the \$8 million Fisher House at the Fargo VA Medical Center	500,000
Department of Veterans' Affairs	Improve and expand veteran medical transportation	147,000
Bank of North Dakota	Fuel production facility loan forgiveness program	21,000,000
Department of Commerce	Transfer to the innovation technology loan fund program	5,000,000
Department of Commerce	Hydrogen development grants	20,000,000
Department of Commerce	Autonomous agriculture matching grant program to accelerate innovation and research within the autonomous agriculture industry, also known as the Grand Farm Initiative	10,000,000
Department of Commerce	Local workforce development incentive grant program to support efforts to recruit, retain, or retrain workers. Requires 25 percent matching funds from local sources.	15,000,000
Department of Commerce	Technical skills training grant program for the expansion of successful workforce training programs to allow businesses to establish or expand internal training and training for new workers and workforce innovation grant programs to focus on attracting skilled workers to the state from targeted communities and regions	5,000,000
State Board of Higher Education	Establishment of a Center for Space Education and Research at the University of North Dakota	10,000,000
Aeronautics Commission	Airport grants	5,000,000
Total		\$570,035,705

### Department of Transportation

The bill also includes a \$100 million appropriation in Section 2 from federal funds in excess of the regular federal funding amounts included in the Department of Transportation's 2021-23 biennium budget, to the Department of Transportation for road and bridge construction projects for the remainder of the 2021-23 biennium.

### Appropriation Recommendation Summary

The following is a summary of the committee's appropriation recommendations:

Bill Draft	Federal State Fiscal Recovery Fund	Federal Coronavirus Capital Projects Fund	Federal Coronavirus Relief Fund	Other Federal Funds	Special Funds	Total
21.1104.06000	\$383,474,000	\$113,276,228	\$12,400,000	\$0	\$0	\$509,150,228
21.1130.02000	100,000	0	0	92,168,583	13,094,159	105,362,742
21.1137.01000	570,035,705	0	0	100,000,000	0	670,035,705
Total	\$953,609,705	\$113,276,228	\$12,400,000	\$192,168,583	\$13,094,159	\$1,284,548,675

#### Bill Draft 21.1135.02000

The committee recommends a bill draft [\[21.1135.02000\]](#) to provide legislative intent to reduce integrated formula payments to school districts eligible to receive ESSER funds by a one-time amount of \$88 per student based on fall 2021 enrollment for information technology upgrades to the state automated reporting system and the statewide longitudinal data system. Legislative intent is provided that the Department of Public Instruction use ESSER funds appropriated to the department by the 2021 Legislative Assembly to reimburse eligible school districts for the amount of integrated formula payments withheld.

#### Bill Draft 21.1134.01000

The committee recommends a bill draft [\[21.1134.01000\]](#) to amend North Dakota Century Code Chapter 15.1-21 to require school districts to offer computer science and cybersecurity courses to students.

# INTERIM SENATE APPROPRIATIONS COMMITTEE

The Chairman of the Legislative Management appointed an Interim Senate Appropriations Committee and assigned the committee the following duties:

- Review proposals to use funding from the federal State Fiscal Recovery Fund established through the federal American Rescue Plan Act of 2021 and develop recommendations for the use of funds.
- Review legislative appropriations from the federal Coronavirus Capital Projects Fund and recommend any necessary changes to existing appropriations from the fund and develop recommendations regarding the use of any remaining available funding.
- Consider any other budget adjustments requiring legislation that are necessary before the 2023 regular legislative session.

Committee members were Senators Ray Holmberg (Chairman), Brad Bekkedahl, Kyle Davison, Dick Dever, Robert Erbele, Joan Heckaman, David Hogue, Karen K. Krebsbach, Tim Mathern, Dave Oehlke, Nicole Poolman, David S. Rust, Ronald Sorvaag, and Terry M. Wanzek.

## STATE FISCAL RECOVERY FUND

### Background

The American Rescue Plan Act of 2021 included \$219.8 billion for the State Fiscal Recovery Fund. Of this amount, \$195.3 billion is available to states, \$25.5 billion will be distributed equally to the states and District of Columbia, resulting in \$500 million allocated to each state. After an additional \$755 million is distributed to the District of Columbia, the remaining \$169 billion will be distributed to the states based on each state's share of seasonally adjusted unemployed persons for the 3-month period ending December 2020. North Dakota's allocation from the State Fiscal Recovery Fund is \$1,007,502,515. The funds have been received and are on deposit in the Bank of North Dakota.

### Allowable Uses

Allowable uses of funding from the State Fiscal Recovery Fund, which must be obligated by December 31, 2024, and spent by December 31, 2026, are as follows:

- Costs related to the Coronavirus (COVID-19) pandemic, including assistance to households, small businesses, nonprofits, and affected industries, such as tourism, travel, and hospitality;
- Provide premium pay of up to \$13 per hour in addition to base pay, up to a maximum of \$25,000, to state, territory, or tribal government workers who perform essential work during the COVID-19 pandemic, or provide grants to employers with employees who perform essential work, which is defined as work needed to maintain continuity of operations of critical infrastructure and other sectors designated by the Governor as critical to protect the health and well-being of residents;
- The cost of providing government services to the extent there was lost revenue as a result of the COVID-19 pandemic; and
- Investment costs in water, sewer, and broadband infrastructure.

States may not use the funding to reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which funds received have been spent or returned. States cannot use funds to make payments to pension plans. The Office of Management and Budget submitted \$1.8 billion of revenue loss as of December 2020; therefore, the funds should be able to be used for the cost of government services.

## CORONAVIRUS CAPITAL PROJECTS FUND

### Background

The American Rescue Plan Act of 2021 appropriated \$10 billion to the United States Department of the Treasury for a Coronavirus Capital Projects Fund to provide payments to states, territories, freely associated states, and tribal governments "to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19)."

North Dakota received an initial allocation of \$112,473,563 from the Coronavirus Capital Projects Fund. North Dakota's allocation was later increased to \$113,276,228. The Legislative Assembly, based on initial information provided regarding the fund, approved using \$106,474,000 of the funding for the following projects for the 2021-23 biennium:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Department of Career and Technical Education	Statewide area career center initiative grant program	70,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total - 2021-23 appropriations		\$106,474,000

### Eligible Uses Based on September 2021 Guidance

The September 2021 guidance provides grant funds may be used for critical capital projects that directly enable work, education, and health monitoring in response to COVID-19. To be eligible for funding, a project must meet all of the following criteria:

1. The capital project invests in capital assets designed to directly enable work, education, and health monitoring;
2. The capital project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and
3. The capital project is designed to address a critical need of the community to be served by it.

### PROPOSALS RECEIVED

The committee reviewed proposals from members of the Legislative Assembly and the Governor for the use of American Rescue Plan Act funds and for other budget adjustments as detailed in this section.

#### Coronavirus Capital Projects Fund

The committee reviewed a proposal to adjust the funding source of certain projects that received an appropriation from the Coronavirus Capital Projects Fund during the 2021 regular legislative session. The proposal would change the funding source of nine projects from the Coronavirus Capital Projects Fund to federal state fiscal recovery funds.

#### Federal State Fiscal Recovery Funds

The committee reviewed 156 proposals to use federal state fiscal recovery funds as follows:

Category	Proposals Received
Infrastructure	The committee reviewed 15 proposals to use federal state fiscal recovery funds for infrastructure projects, including natural gas pipelines, roads, water control, and other projects.
Aid to political subdivisions	The committee reviewed 33 proposals to use federal state fiscal recovery funds to provide aid to political subdivisions for road and bridge projects, local park district infrastructure projects, water and sewer projects, and other purposes.
Capital improvements	The committee reviewed 34 proposals to use federal state fiscal recovery funds for capital projects for state agency and institution building projects, deferred maintenance, and other purposes.
Information technology	The committee reviewed 19 proposals to use federal state fiscal recovery funds for information technology projects, including cybersecurity enhancements, state agency software projects, and other purposes.
Economic Development	The committee reviewed 29 proposals to use federal state fiscal recovery funds for economic development, including research programs, workforce initiatives, business incentives, and other purposes.
Other proposals	The committee reviewed 26 proposals to use federal state fiscal recovery funds for other purposes, including human service programs, long-term care facility assistance, child care programs, and other purposes.

### Other Budget Adjustments

The committee reviewed 27 proposals for other budget adjustments. The proposals included adjustments to federal spending authority for agencies, the authorization of new full-time equivalent (FTE) positions, additional authority to allow for the distribution of federal local fiscal recovery funds, and other purposes.

## COMMITTEE RECOMMENDATIONS

The committee recommends the following bill drafts:

1. A bill draft [\[21.1108.03000\]](#) to:

- Adjust the funding source of the following projects from the Coronavirus Capital Projects Fund to federal state fiscal recovery funds:

Agency	Project	Amount
Office of Management and Budget	Medical center construction grant	\$500,000
Judicial branch	Information technology equipment	157,600
Department of Public Instruction	Children's science center grant	5,900,000
University of North Dakota	Airport apron project	5,000,000
Dickinson State University	Pulver Hall and meat processing laboratory projects	4,000,000
Highway Patrol	Law Enforcement Training Academy remodel project	3,000,000
State Historical Society	Capital project planning and historic site repairs	4,200,000
Parks and Recreation Department	Deferred maintenance projects and repayment of International Peace Garden project loan	11,716,400
Agriculture Commissioner	Intermodal facility grant program	2,000,000
Total		\$36,474,000

- Provide for the Coronavirus Capital Projects Fund to be allocated for career and technical education center projects (\$53.3 million) and rural broadband projects (\$60 million). In addition, \$30 million is provided from state fiscal recovery funds for career and technical education projects.
- Appropriate \$317 million of state fiscal recovery funds to the Department of Transportation for state road and bridge projects (\$200 million), county bridge projects (\$100 million), and transportation funding distributions to townships (\$17 million).
- Authorize any unused federal coronavirus relief funds to be used for salary costs of the Highway Patrol, Department of Corrections and Rehabilitation, and Adjutant General.

2. A bill draft [\[21.1131.04000\]](#) to:

- Provide federal funds authorization of \$3,014,975 to the State Treasurer for additional local fiscal recovery fund allocations to political subdivisions.
- Continue the authorization for the University of North Dakota to use \$750,000 of Bank of North Dakota profits for campus network upgrades.
- Provide an appropriation of \$537,297 to the Attorney General from the Attorney General refund fund for salary equity increases for State Crime Laboratory employees.
- Provide an appropriation of \$10 million to the Department of Public Instruction from withheld integrated formula payments for information technology upgrades.
- Authorize 16 FTE positions for the Department of Human Services for the county social and human services project.
- Authorize the Department of Human Services to transfer funding between line items in House Bill Nos. 1394 and 1395 (2021).
- Provide federal funds authority of \$92,453,608 to the Department of Human Services for federal medical assistance percentage adjustments and for other various programs.
- Provide an appropriation from the Bank of North Dakota operating fund to the bank for salaries and wages.
- Provide funding of \$1,806,862 from the Retirement and Investment Office operating fund to the agency for six new FTE positions and other salary adjustments.
- Provide an appropriation of \$10 million from the Department of Public Instruction operating fund from withheld integrated formula payments and \$100,000 from the State Fiscal Recovery Fund to the department for information technology upgrades and for information technology upgrade funding in lieu of withholding from schools ineligible to receive allocations from the federal Elementary and Secondary School Emergency Relief Fund.
- Amend Section 9 of Chapter 46 of the 2021 Session Laws relating to grant requirements for the beyond visual line of sight unmanned aircraft system program.



3. A bill draft [\[21.1123.01000\]](#) to:

- Appropriate federal state fiscal recovery funds to the following state agencies:

Agency	Purpose	Amount
Industrial Commission	Grants for a natural gas pipeline project to transport natural gas from western to eastern North Dakota	\$150,000,000
Industrial Commission	Abandoned oil well conversion to water supply grant program	3,200,000
Department of Water Resources	Water infrastructure projects	75,000,000
Department of Corrections and Rehabilitation	Stipends to county jails for costs to house inmates sentenced to the department but deferred admission	4,800,000
Parks and Recreation Department	Grants to local park districts to renovate and upgrade existing outdoor facilities with a \$1 to \$1 matching requirement	5,000,000
Main Research Center	Capital projects at the Carrington, Dickinson, Hettinger, and Central Grasslands Research Extension Centers	8,029,000
State Department of Health	State health laboratory project	15,000,000
Department of Corrections and Rehabilitation	Free through recovery program increase in capacity	2,995,200
Parks and Recreation Department	State park projects with a minimum of \$100,000 spent on projects at each park	10,000,000
Office of Management and Budget	State facility critical maintenance projects	10,000,000
Office of Management and Budget	Heating and cooling upgrades in the legislative wing of the Capitol	7,000,000
State Historical Society	State historic site repairs	950,000
North Dakota State University	Higher performance computing	2,200,000
Minot State University	Harnett Hall project	25,000,000
University of North Dakota	Merrifield Hall project	50,000,000
Bismarck State University	Polytechnic building project	38,000,000
University of North Dakota School of Medicine and Health Science	Hyperbaric oxygen therapy project	2,104,121
North Dakota University System	Dakota Digital Academy	475,000
Attorney General	Missing persons database	75,000
Attorney General	Prosecuting case management system replacement	1,000,000
Highway Patrol	Radios compatible with the statewide interoperable radio network	2,612,000
Department of Corrections and Rehabilitation	Radios compatible with the statewide interoperable radio network	2,057,384
Information Technology Department	Grant to North Dakota Stockmen's Association for brand inspection program software	401,000
Adjutant General	State active duty software replacement	450,000
Judicial branch	Replace docket system	2,020,000
Office of Administrative Hearings	Web-based document management system	20,000
Department of Human Services	Retention bonuses for direct service professionals	2,500,000
Department of Human Services	Funding to assist long-term care facilities	25,000,000
Department of Human Services	Funding for western North Dakota behavioral health (\$4 million), Medicaid eligibility system upgrade (\$5 million), child care services (\$17 million), and substance use disorder voucher program (\$3 million)	29,000,000
Department of Human Services	Grant to organization providing alternatives to abortion services	1,500,000
Adjutant General	Camp Grafton housing upgrades	2,000,000
Department of Veterans' Affairs	Grant to assist in Fisher House construction	500,000
Department of Veterans' Affairs	Improve and expand veterans' medical transportation	147,000
Bank of North Dakota	Fuel production facility grant program	21,000,000
Department of Commerce	Transfer to the innovation technology loan fund	5,000,000
Department of Commerce	Hydrogen development grants	20,000,000
Department of Commerce	Autonomous agriculture matching grant program	10,000,000

<b>Agency</b>	<b>Purpose</b>	<b>Amount</b>
Department of Commerce	Local workforce development incentive grant program with 25 percent local match requirement	15,000,000
Department of Commerce	Technical skills training grant program	5,000,000
University of North Dakota	Space education and research	10,000,000
Aeronautics Commission	Airport grants	5,000,000
Total		\$570,035,705

- Appropriate \$100 million of additional federal funds to the Department of Transportation. The funds are not subject to the excess federal funds requirements in House Bill Nos. 1015 and 1431 (2021).
4. A bill draft [\[21.1132.02000\]](#) to authorize the Department of Public Instruction to withhold integrated formula payments to school districts to be used for information technology project upgrades to the state automated reporting system and the statewide longitudinal data system.

# JUDICIARY COMMITTEE

The Judiciary Committee was assigned six studies:

- House Bill No. 1254 (2021) directed a study of the types of spousal support ordered by the district court and the desirability and feasibility of providing statutory guidance for awards of spousal support. The study required input from practicing attorneys in the area of family law and the Department of Human Services' Division of Child Support Enforcement and a review of the frequency and duration of spousal support awards entered in the state.
- House Bill No. 1036 (2021) directed a study, in collaboration with the Commission on Juvenile Justice, of the juvenile justice process. The study required a review of the effective intervention, resources, and services for children.
- Senate Bill No. 2258 (2021) directed a study, in collaboration with the Commission on Juvenile Justice, of the necessity of licensing shelter care programs for runaway, homeless, and former foster care youth and the ability of these youth to access temporary shelter. The study required a review of the current barriers, effective intervention, and necessary resources and services.
- Section 27 of House Bill No. 1003 (2021) directed a study of the economic and societal impacts of gambling addiction in the state. The study required a review of the trend of gambling addiction since the expansion of electronic pull-tab gambling in the state, state funding provided for gambling addiction and disorder prevention and treatment, support programs for individuals and families affected by gambling addiction, and the use of net proceeds for eligible organizations.
- House Concurrent Resolution No. 3021 (2021) directed a study of the factors contributing to the nation's firearm and ammunition shortage and the impact the shortage has had on the quality of life for North Dakota citizens. The study required the development of a plan of action to resolve the state's firearm and ammunition shortage.
- Senate Bill No. 2282 (2021) directed a study the membership of the Board of University and School Lands and the Industrial Commission. The study required consideration of potential conflicts of interest relating to the memberships, possible changes to the composition of the membership of the Board of University and School Lands and the Industrial Commission, and possible changes to Section 3 of Article IX of the Constitution of North Dakota.

The Legislative Management delegated to the committee the responsibility:

- To review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws, pursuant to North Dakota Century Code Section 54-35-02.
- 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, pursuant to Section 54-03-32.

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 regarding any civilly forfeited property, pursuant to Section 19-03.1-36.8(4).
- 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, pursuant to Section 54-61-03; and information regarding actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to indigent juveniles and nonindigent juveniles, and any amounts collected from those financially able to pay all or part of the cost of providing legal counsel and related services for juveniles, pursuant to Section 46 of House Bill No. 1035 (2021).
- 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, pursuant to Section 53-06.2-04.
- A report from the North Dakota Lottery regarding the operation of the lottery, pursuant to Section 53-12.1-03.

- 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, pursuant to Section 50-06-31.
- 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, pursuant to Section 19-24.1-39.
- 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, pursuant to Section 1 of House Bill No. 1237 (2019).
- A report from the Supreme Court on the status of the program to assist rural counties and municipalities in recruiting attorneys, pursuant to Section 27-02.2-13.
- A report from DOCR, the Juvenile Court, and the Indian Affairs Commission on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under Section 27-20.4-27.

Committee members were Representatives Kim Koppelman (Chairman), Mary Adams, Ruth Buffalo, Sebastian Ertelt, Karla Rose Hanson, Mary Johnson, Terry B. Jones, Karen Karls, Lawrence R. Klemin, Jeffery J. Magrum, Bob Paulson, Shannon Roers Jones, Bernie Satrom, Mary Schneider, and Steve Vetter and Senators JoNell A. Bakke, Robert O. Fors, Diane Larson, and Janne Myrdal.

## **SPOUSAL SUPPORT STUDY**

### **Background**

Title 14 contains the majority of the statutes dealing with domestic relations or family law in the state, including chapters dealing with marriage, divorce, annulment, separation, custody and visitation, child support, adoption, alternative dispute resolution, and domestic violence. Chapter 14-05 provides the law governing divorce and Section 14-05-24.1 sets forth the law as it relates to spousal support, providing "... the court may require one party to pay spousal support to the other party for a limited period of time in accordance with this section" and granting the court authority to modify its spousal support orders. District courts are the state trial courts of general jurisdiction and hear civil, criminal, domestic relations, small claims, and probate cases. In some districts, judicial referees have been appointed to preside over juveniles, judgment enforcement, and domestic relations proceedings other than contested divorces.

Section 14-05-24.1 was enacted by Senate Bill No. 2046 (2001) and amended by House Bill No. 1399 (2015) to require the termination of spousal support, except rehabilitative spousal support, upon the remarriage of the spouse receiving support and unless otherwise agreed to by the parties, or upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabitating with another individual in a relationship analogous to a marriage for at least 1 year.

### **Other States**

Although North Dakota, Montana, South Dakota, and Minnesota do not have a mathematical formula to control the amount and length of spousal support or whether it should be awarded, Minnesota and Montana have specific statutory factors for the court to consider when determining spousal support payments. Several states provide a mathematical formula for determining spousal support. In California, for example, the formula for calculating spousal support is 40 percent of the difference between the parties' net incomes without dependent children and 30 percent with dependent children. Courts in Illinois use a similar formula after considering a list of factors similar to Minnesota and Montana to determine whether support is appropriate.

### **Previous Studies**

In 1995, the North Dakota Supreme Court, at the request of the State Bar Association of North Dakota, established a task force to study family law issues. The task force was assigned to review family law procedures and related matters presently used by the judicial system in North Dakota; evaluate the need for changes to ensure accessibility to the system and responsiveness of the system; assess the impact of court unification on the process; and evaluate the effectiveness of the process for clients, attorneys, and the courts. The Joint Family Law Task Force completed its work in April 1998 and concluded the task force had completed as many of its goals as were practicable.

Senate Concurrent Resolution No. 4032 (1999) directed a study of the family law process in the state with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. Although the 1999-2000 interim Judiciary Committee considered guidelines for spousal support and reviewed whether a more predictable and consistent solution could be developed, the committee concluded while some states included arbitrary time limits for spousal support or establish "years of marriage" demarcation for purposes of setting support, no state had adopted a comprehensive and fair set of guidelines.

The 1999-2000 interim Judiciary Committee also reviewed the guidelines adopted by the Superior Court of Arizona in Maricopa County which apply to marriages of at least 5 years and included some financial restrictions regarding the postdivorce income of the two parties. If the parties meet the threshold under the guidelines, a mathematical formula for calculating spousal support is used. However, the guidelines do not create a presumption of support but rather serve as a starting point. Although the guidelines were discussed by the interim committee, district judges expressed concern about the limited use of the guidelines and whether spousal support guidelines would provide a fair and reasonable alternative for the calculation of spousal support. The committee ultimately recommended the creation of a new section regarding spousal support, which is codified as Section 14-05-24.1.

Section 2 of Senate Bill No. 2361 (2005) directed a study of the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce effects education. The 2005-06 interim Judiciary Committee completed the study and recommended a bill to reduce the cost of a marriage license fee by \$25.

### **Testimony and Committee Considerations**

The committee received testimony and information from attorneys in the state who practice family law, a representative from the Supreme Court, a representative of the Child Support Enforcement Division of DHS, and members of the community.

The committee received testimony indicating the primary concerns among practitioners are the inability to predict an outcome accurately and the level of judicial discretion involved in each case. Testimony indicated codifying the court-created Ruff-Fischer guidelines used when dividing property and determining spousal support would be a step in the right direction. Testimony indicated permanent and rehabilitative spousal support are the two general types of spousal support awarded in the state.

The committee received testimony indicating the inability to accurately predict an outcome in any given case results in clients who are left to make difficult decisions and attorneys who only are able to offer forecasts based on research and experience because judges exercise considerable discretion over support amounts. Testimony indicated when a judge is presented with the same set of facts, a judge in one court could arrive at a completely different support award than a judge in another court within the same jurisdiction. Testimony further indicated although spousal support is a necessary tool to equalize the economic disadvantages of a marriage ending in divorce, attorneys need a tool to allow them to give reasonably certain advice to clients in terms of an outcome, as is done with the division of property, to avoid the additional expense of the parties going to trial.

Testimony indicated establishing guidelines within the Century Code would provide clear options to reduce reliance on the interpretation of the Supreme Court by district judges and result in continuity in judgments. Testimony indicated although the court is required to review the Ruff-Fischer guidelines, the court is not required to mechanically address each guideline in the final divorce judgment.

The committee considered a bill draft relating to spousal support. The bill draft would codify the factors the court must consider in determining the amount and duration of spousal support, set forth the types of support the court may award, provide a standard for when spousal support terminates based on the length of the marriage, and create a rebuttable presumption for termination of spousal support.

The committee expressed a desire to codify the Ruff-Fischer guidelines to provide individuals a more consistent result during a divorce and to eliminate the varied outcomes individuals are experiencing across the state dependent upon which judicial district or judge presides over a divorce action. Although the committee also discussed the possibility of making additional changes to child support guidelines, the committee was informed the existing child support guidelines are working.

### **Recommendation**

The committee recommends a bill draft [23.0117.01000] relating to determining spousal support.

## **JUVENILE JUSTICE PROCESS STUDY**

Because of the similarities in the studies directed by House Bill No.1036 (2021) and Senate Bill No. 2258 (2021), the two studies were combined into one comprehensive study.

### **Background**

Section 27-20.2-03 provides the Juvenile Court with exclusive original jurisdiction over a variety of proceedings, including those in which a child is alleged to be delinquent, a child in need of services, or a child in need of services or protection under Chapter 27-20.4. Under Chapter 27-20.2, "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 27-20.4-21 authorizes a 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, which operates the Youth Correctional Center and eight regional community-based services offices. Section 27-21-02 provides "[t]he 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 before receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. 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 individuals committed to the division.

### **Intervention, Resources, and Services for Children**

House Bill No. 1036 is a continuation of the study of the juvenile justice process conducted by the 2019-20 interim Judiciary Committee, which resulted in the recommendation and passage of House Bill No. 1035 (2021). The 2019-20 interim Judiciary Committee worked closely with the Commission on Juvenile Justice to craft House Bill No. 1035 to ensure youth at a low risk of reoffending are able to quickly and easily receive services outside the juvenile justice system. House Bill No. 1035 repealed Chapter 27-20 and replaced it with Chapter 27-20.2, which is referred to as "The Juvenile Court Act." House Bill No. 1035 also created Chapter 27-20.3, relating to child welfare, and Chapter 27-20.4, relating to delinquency. Before the passage of House Bill No. 1035, the Uniform Juvenile Court Act consisted of the law relating to unruly or deprived children, now child welfare, and delinquency in a single chapter that was difficult to navigate and contained outdated definitions without reflecting the modern tools and phrases used in the juvenile justice system.

To ensure youth at a low risk of reoffending are able to quickly and easily receive services outside the juvenile justice system, House Bill No. 1035 established a case category common in many other states of "child in need of services." This category encompasses all the behavior that had been referred to as "unruly child," ungovernable behavior, truancy, runaway, and the use of tobacco under 14 years of age while excluding minors in consumption or possession. House Bill No. 1035 also broadened a child's right to counsel to allow a child to be fully advised of the legal consequences by creating a presumption that all children are entitled to counsel in a delinquency case in an effort to lower the number of continuances and shorten stays in pre-adjudicatory detention or shelter care while requests and applications for counsel are processed.

The creation of Chapter 27-20.4 established clear limits on the use of secure detention and requires the use of validated risk and needs assessments, mental health and trauma screens, and a predisposition investigation and report to the court before a formal court disposition. The chapter also provides for shorter time limits on probation, from 9 to 6 months, places limits on removing custody of a child from parents due to low-level probation violations, and requires the use of graduated sanctions by court officers who manage probation caseloads.

### **Shelter Care for Runaway, Homeless, and Former Foster Care Youth**

Section 27-20.3-04 directs the Director of the Juvenile Court to receive and examine referrals of a child in need of services or a child in need of protection for the purpose of considering diversion of services and to make the appropriate referrals and issue temporary custody orders. Section 27-20.3-01 further defines "diversion" as "an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions" and defines "shelter care" as "temporary care of a child in physically unrestricted facilities."

### **Testimony and Committee Considerations**

The committee received testimony from representatives of the Commission on Juvenile Justice, DOH, DHS, members of local law enforcement, the Council of State Governments, and representatives of the Dakota Boys and Girls Ranch, Adult & Teen Challenge, YouthWorks, and Home on the Range.

#### **Shelter Care**

The committee received testimony indicating rural outreach for juvenile youth with mental health issues is limited due to a lack of mental health professionals in rural areas and children and families need long-term ongoing support. Testimony indicated although the Dakota Boys and Girls Ranch, North Dakota Adult & Teen Challenge, YouthWorks, and Home on the Range provide services to youth in the state, the State Hospital does not provide services to youth and human service zone personnel are not adequately trained in youth mental health.

The committee indicated administrative rules for shelter care program operations are in place and DHS is working with providers to ensure policies are in place to allow adequate space to properly separate residents who are children in need of services or protection from children who engage in delinquent acts. Testimony indicated shelter care is used to

provide a temporary safe bed for a youth through a certified shelter care program site or licensed foster family home for a period not to exceed 7 days. Testimony indicated during the 2019-21 biennium there were 120 instances when shelter care was used. Testimony also indicated shelter care is different from respite care, which provides temporary relief, either hourly or for up to 4 days, through licensed family foster homes, licensed child care providers, or a contracted vendor agency. During the 2019-21 biennium, there were 446 instances of respite care.

### **Commission on Juvenile Justice**

The committee received testimony indicating the Commission on Juvenile Justice supervises three planning committees, including the Juvenile Justice Planning Committee, the Planning Committee for Children in Need of Services, and the Planning Committee for Alternatives to Juvenile Detention. The Division of Juvenile Services secured a federal grant allowing the state to continue to retain the expertise of The Council of State Governments Justice Center for technical assistance and guidance to all three committees through September 30, 2023. Testimony indicated support for the development of a delinquency code for the state which does not rely on the adult criminal code.

Testimony indicated there have been numerous positive changes since the passage of House Bill No. 1035, including every youth who is formally charged with a delinquent offense is appointed counsel. Testimony also indicated the detention risk screening tool ensures secure detention for youth who pose the highest risk to public safety and the youth assessment screening inventory instrument assists the courts and probation staff in making the best decisions in every case.

The committee received testimony indicating a critical next step is ensuring quality, evidence-based, and securely funded services are available to all youth and families regardless of geography. Testimony also indicated the process of implementing the updates has been challenging, including the transition of the unruly case category to the human service zones, which was completed August 1, 2022.

The committee considered a bill draft [21.0173.01000] relating to various cross-references and other updates as a result of House Bill No. 1035. The bill draft would have replaced references to "deprivation of a minor" with "a child in need of protection" throughout the Century Code and established a method for making a delinquency referral to Juvenile Court.

Although the committee supported the bill draft, the committee determined the bill draft should not proceed as an interim committee bill because of additional changes that are necessary. The bill draft would have served as a "clean-up" to various sections while also providing a method for making a delinquency referral to Juvenile Court. The committee also was supportive of the continued work of the Juvenile Justice Commission and understood the work of the Commission is not yet complete, which likely will result in additional bills or changes to the bill draft considered by the committee.

### **Conclusion**

The committee makes no recommendation with respect to the juvenile justice study.

## **GAMBLING ADDICTION STUDY**

### **Background**

The constitutional prohibition on gambling was maintained until 1976 when it was amended to allow certain forms of charitable gaming. Under the constitutional provision, the Legislative Assembly is permitted to authorize 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.

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. Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. A 1979 law added sports pools on professional sports. In 1981, charities were first permitted to conduct the game of twenty-one. In 1987, draw poker and stud poker were added to the list of permitted games. Also, that same year, Chapter 53-06.2 was enacted which allows most charities to conduct horse racing under the pari-mutuel system. In 1989, eligible organizations were permitted to conduct calcuttas, allow off-track pari-mutuel betting on races held at licensed racecourses inside or outside the state, and use electronic video gaming devices in place of normal methods of playing otherwise allowable games of chance. However, legalization of electronic video gaming was referred and rejected at a special election on December 5, 1989. In 1991, paddlewheels were added as a game of chance. In 2017, electronic quick shot bingo, fifty-fifty raffle systems, and electronic pull tabs were added as games of chance.

## **Administration and Enforcement of Charitable Gaming**

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. 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 legislation 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 a law or rule. However, in 1993, 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.

## **Gambling Addiction and Addiction Services**

During the 2019-20 interim, the Taxation Committee completed a study of the state's charitable gaming laws; specifically, whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate. The committee received testimony indicating a record amount of \$84.5 million was wagered on electronic pull-tab devices in the state in May 2020 and the Gaming Division anticipated \$1.8 billion in gaming proceeds and \$26.8 million in gaming tax during the 2019-21 biennium. The committee recognized additional funds might be needed for gambling prevention and treatment considering the explosive growth of gaming in the state.

As of February 28, 2021, there were over 3,330 electronic pull-tab devices being conducted by 269 charitable gaming organizations in 655 sites across North Dakota with 166 sites pending licensing requesting devices. Gross proceeds from August 14, 2018, through May 31, 2021, totaled \$2,314,228,219, with \$2,075,064,393 in prizes.

House Bill No. 1212 (2021) created the charitable gaming operating fund, consisting of all gaming taxes, monetary fines, and interest and penalties and directed a quarterly allocation of \$10,000 to the gambling disorder prevention and treatment fund. Testimony on House Bill No. 1212 indicated since August 2018, electronic pull-tab devices have generated the same amount of revenue that previously took the state nearly 10 years to generate.

In fiscal year 2016, after the creation of the compulsive gambling prevention and treatment fund, DHS established the Problem Gambling Advisory Council to focus on raising awareness about problem gambling, gambling addiction and treatment services, and resources. Before 2021, Gamblers Choice, a program offered by Lutheran Social Services of North Dakota, was the sole provider of accredited counseling services for problem gamblers and their families in the state. The Gamblers Choice program received funding from a variety of sources, including state funds from North Dakota and Minnesota, the Indian Gaming Association, and the United Way. Since Lutheran Social Services of North Dakota suspended its programs in January 2021, gambling addiction services are being provided by the Department of Health and Human Services through the Gambler North Dakota program.

## **Testimony and Committee Considerations**

The committee received testimony from a representative of the Attorney General's office, the Director of Gambler's Choice, DHS, and members of the public.

Testimony indicated an increase in funding for gambling addiction services from charitable gaming provides an increased appropriation of \$10,000 per quarter for a total of \$40,000 each year. Testimony also indicated roughly 1 in 20 individuals who participate in gambling have an addiction and data from a study conducted in 2016-17 indicated about 19,000 individuals in the state have a gambling addiction. Testimony indicated electronic pull tabs are the source of the majority of instances of gambling addiction in the state because the machines operate like a slot machine. In fiscal year 2020, 67 residents received gambling treatment services, 1,020 hours of in-person services were delivered, 441 hours of telebehavioral health services were delivered, and when filing health insurance for gambling treatment, 90 percent of claims were denied.

The committee was informed the gross proceeds for electronic pull tabs from April 1, 2021, through June 30, 2021, totaled \$418,024,151 and for the 2019-21 biennium gross proceeds for all game types totaled an estimated \$1,880,000,000. Testimony indicated the increased availability of pull-tab machines has increased significantly the need for a full continuum of programming across the state. Electronic pull tabs gross about \$4 million each quarter and there is no statutory limit on the number of devices that can be operated in the state.

The committee expressed frustration with the increase in the number of electronic pull-tab machines across the state and the limited oversight over each machine. Committee members acknowledged additional funds may be needed for gambling addiction prevention and treatment. Several members of the committee expressed a desire to work with various stakeholders on the issue and introduce a bill during the 68<sup>th</sup> Legislative Assembly.



## **Conclusion**

The committee makes no recommendation with respect to the gambling addiction study.

## **FIREARM AND AMMUNITION SHORTAGE STUDY**

### **Background**

Testimony during the hearings for House Concurrent Resolution No. 3021 (2021) indicated the United States is experiencing a shortage of firearms and ammunition. Testimony further indicated the shortage may be the result of a lack of raw materials necessary to manufacture both firearms and ammunition. The shortage began in the 1<sup>st</sup> quarter of 2020 as the effects of the Coronavirus (COVID-19) pandemic impacted supply lines for raw materials and components such as lead, copper, brass, and gunpowder while retailers experienced a surge in demand for firearms and ammunition. In 2019, the number of individuals applying for a Federal National Instant Criminal Background Check to purchase a firearm increased 39 percent from the previous year.

Although large manufacturers are running at maximum capacity, manufacturers face difficult decisions because there are significant costs associated with purchasing new machines and the cost for raw materials is high. Additional factors that may be contributing to the shortage is the bankruptcy, sale, and breakup of Remington, one of the world's largest ammunition manufacturers and one of the two full-line ammunition manufacturers in the country, and the increase in protests and civil unrest in 2020.

### **Testimony and Committee Considerations**

The committee received testimony from the Director of the Bureau of Criminal Investigation, the National Rifle Association, and the Attorney General. The committee's deliberations focused on the cause of the shortage.

Testimony indicated the shortage of firearms and ammunition in the state is the result of a perfect storm of anxiety among members of the public and increased demand. Testimony indicated the total number of new first-time gun buyers in 2020 exceeded 5 million and with each firearm purchased, several boxes of ammunition also are purchased. Testimony also indicated although the shortage is impacting law enforcement, the United States military is not affected because the Army produces ammunition for all branches of the military at six sites across the country.

The committee concluded the lack of firearms and ammunition available for purchase is the result of various factors, including a lack of raw materials and the historical increase in the number of individuals purchasing firearms. The committee also acknowledged the issue might be a short-term problem as the shortage that inspired the study has diminished.

## **Conclusion**

The committee makes no recommendation with respect to the firearm and ammunition study.

## **BOARD OF UNIVERSITY AND SCHOOL LANDS AND INDUSTRIAL COMMISSION MEMBERSHIP STUDY**

### **Background**

#### **Board of University and School Lands**

The Department of Trust Lands is the administrative arm of the Board of University and School Lands, serving under the direction and authority of the board. Section 3 of Article IX of the Constitution of North Dakota and Section 15-01-01 set the membership of the board as the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The department's primary responsibility is managing the common schools trust fund and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The department also manages the strategic investment and improvements fund, the coal development trust fund, the Capitol building fund, the Indian cultural education trust, and the Theodore Roosevelt Presidential Library and Museum endowment fund. The department also administers the responsibilities outlined in the Uniform Unclaimed Property Act. As the administrator, the department collects "unclaimed property," such as uncashed checks and unused bank accounts, and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the common schools trust fund.

#### **History**

Upon the passage of the Northwest Ordinance of 1785, the United States Congress established a policy of granting land to a state when it entered the Union as an asset to generate funding to support the public education system, a fundamental state responsibility. Starting with Ohio in 1785, and ending with Arizona and New Mexico in 1910, each new state received a set of federal lands that, under federal enabling legislation and the corresponding state constitution, were to be held in trust for the benefit of the public schools. The trust mandates the states are to use the lands to generate revenue to support the public schools and other institutions.

In 1889, Congress passed the Enabling Act "to provide for the division of the Dakota Territory into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Section 10 of the Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases in which portions of sections 16 and 36 had been sold before statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled nearly 2.6 million acres.

The Enabling Act also provided land grants to North Dakota for the support of colleges, universities, the State Capitol, and other public institutions. Revenues are generated through the prudent management of trust assets, which include approximately 706,600 surface acres and nearly 2.6 million mineral acres. The Board of University and School Lands is a result of the Enabling Act, making it an agency that predates statehood.

### **Membership**

The membership of the Board of University and School Lands has changed only once in the past 130 years. Senate Bill No. 2072 (1985) and Senate Concurrent Resolution No. 4006 (1985) replaced the State Auditor with the State Treasurer on the Board of University and School Lands and the Public Employees Retirement Board. In 1987, nearly 100 years after the Board of University and School Lands was created, the membership was changed after the passage of the ballot measure to amend Section 3 of Article IX of the Constitution of North Dakota.

### **Conflict of Interest**

Testimony in opposition to Senate Bill No. 2282 (2021) indicated adding the Agriculture Commissioner to the Board of University and School Lands would create several conflicts of interest because the Agriculture Commissioner's mission is to serve, advocate, protect, and promote agriculture to benefit everyone, and because the placement of the Agriculture Commissioner on the board places the entire Industrial Commission on the board and the Industrial Commission oversees the Bank of North Dakota.

### **Industrial Commission**

In 1919, House Bill No. 17 created the North Dakota Industrial Commission to conduct and manage, on behalf of the state, certain utilities, industries, enterprises, and business projects established by state law. The membership of the Industrial Commission has not changed since 1919 and consists of the Governor, the Attorney General, and the Agriculture Commissioner. The Oil and Gas Division of the Industrial Commission regulates the drilling and production of oil and gas in North Dakota. Its mission is to encourage and promote the development, production, and utilization of oil and gas in the state to prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from vital natural resources.

### **Testimony and Committee Considerations**

The committee received testimony from the Commissioner of the Board of University and School Lands, a representative of the Department of Agriculture, and the Secretary of State. The committee's deliberations focused on whether the membership of the Board of University and School Lands should be changed.

Testimony indicated adding the Agriculture Commissioner to the Board of University and School Lands may create a conflict of interest because the Agriculture Commissioner also serves on the Industrial Commission and a meeting of the Industrial Commission likely would be a quorum of the board. Testimony further indicated there are significant overlaps in topics and information relating to both entities which creates an appearance and the opportunity to have members influenced by conflicting responsibilities.

The Industrial Commission oversees the Bank of North Dakota and the Board of University and School Lands has the fiduciary responsibility of administering five loan programs for which there are agreements with the Bank of North Dakota to manage the applications and day-to-day functions of the loans. Testimony indicated the separation of the duties between the Industrial Commission and the board exist to ensure there are checks and balances in place for the loan programs. Testimony also contended the five elected officials are an ideal blend to oversee the financial and land assets administered by the Department of Trust Lands and there is not a valid reason to change the membership.

Committee members expressed concern regarding the conflict of interest that would be created if a member of the Board of University and School Lands also served on the Industrial Commission. Concerns were raised about the types of funds and programs administered by each entity and whether each entity might have competing goals. Committee members also expressed satisfaction with decisions made by the existing membership of the Board of University and School Lands and the Industrial Commission and members did not see a need to make any changes.

## **Conclusion**

The committee makes no recommendation with respect to the Board of University and School Lands and Industrial Commission membership study.

## **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:

- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, which the ULC approved in 2018, addresses the disclosure of private images of nudity or sexual conduct without consent. The Act creates a civil cause of action; protects victims' identities; and provides various remedies. The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act has been enacted by seven states.
- Uniform Commercial Code (UCC) amendments, which the ULC approved in 2022. The amendments to the UCC address emerging technologies, providing updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), artificial intelligence, and other technological developments. The amendments span almost every article of the UCC and add a new Article 12 addressing certain types of digital assets defined as "controllable electronic records." The amendments provide new default rules to govern transactions involving these new technologies and clarify the UCC's applicability to mixed transactions involving both goods and services. The amendments also contain miscellaneous revisions unrelated to technological developments but providing needed clarification.
- Revised Uniform Law on Notarial Acts (RULONA), which the ULC approved in 2010 and most recently revised in 2021. Amendments to the RULONA, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). The ULC approved further amendments to the uniform Act in 2021 to accommodate remote ink notarization and to establish a notary may administer an oath or affirmation remotely via communication technology. North Dakota enacted RULONA in 2011 and enacted the 2018 amendments in 2019.

## **Conclusion**

The committee makes no recommendations 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 addressing the following statutory provisions:

- Section 1 of the bill draft clarifies the use of the terms "commissioner" and "department," as used in the law relating to public access to leased and unleased trust lands, refers to the Commissioner of University and School Lands and the Department of Trust Lands.
- Section 2 of the bill draft clarifies the use of the term "commissioner," as used in the law relating to vehicular access to trust lands, refers to the Commissioner of University and School Lands.
- Section 3 of the bill draft corrects the reference to the University of North Dakota medical school to instead refer to the University of North Dakota School of Medicine and Health Sciences, which is the correct name of this entity.
- Section 4 of the bill draft corrects an internal cross-reference in Section 26.1-05-19(24). Between 2010 and 2017, the Code Revisor repealed subsection 6 due to reference to a repealed chapter of Century Code, necessitating this correction.
- Section 5 of the bill draft corrects internal cross-references in Section 26.1-05-19(34). Between 2010 and 2017, the Code Revisor repealed subsection 6 due to reference to a repealed chapter of Century Code, necessitating these corrections. This section corrects cross-references to subsections 19, 20, and 21.
- Section 6 of the bill draft corrects an outdated cross-reference to Section 26.1-05-19(21) which occurred due to renumbering of this section by the Code Revisor between 2010 and 2017.

- Section 7 of the bill draft creates a new subdivision to Section 27-20.2-21(1), regarding the ability to access juvenile court files and records. House Bill No. 1035 (2021) repealed Chapter 27-20 and relocated several of the repealed provisions in the newly created Chapter 27-20.2; however, House Bill No. 1047 (2021) amended the repealed Section 27-20-51(1). This section incorporates the intended amendment into the newly created Section 27-20.2-21.
- Section 8 of the bill draft corrects an outdated cross-reference to Chapter 47-30.1, regarding unclaimed property. Senate Bill No. 2048 (2021) repealed Chapter 47-30.1 and replaced it with Chapter 47-30.2. This section updates that cross-reference to refer to Chapter 47-30.2.
- Section 9 of the bill draft corrects a formatting error to Section 39-06-32, regarding the authority to suspend motor vehicle operator licenses, which occurred in 2013.
- Sections 10 through 12 of the bill draft correct cross-references that are necessary due to the formatting correction under Section 9 of the bill.
- Section 13 of the bill draft corrects a formatting error to Section 40-34-13, regarding the use of money remaining after the payment of bonds.
- Section 14 of the bill draft corrects a formatting error to Section 40-35-02, regarding the definition of the term "undertaking" as it relates to revenue bonds.
- Section 15 of the bill draft corrects an outdated reference to Section 11-33-20, which was repealed in 2015.
- Sections 16 and 17 of the bill draft remove obsolete language relating to city and county general fund levy authority. The language being removed was included in Senate Bill No. 2144 (2015), which eliminated and consolidated various types of levy authority, to slowly phase cities and counties down to the new levy limits. The period addressed by the phase-in language has passed, so the obsolete language has been removed.
- Section 18 of the bill draft corrects an outdated reference to "state engineer" in Section 61-32-03.1(6), regarding permits required to drain subsurface waters.

### **Recommendation**

The committee recommends a bill draft [\[23.0171.01000\]](#) 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 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 January 2021 and August 2022.

### **Conclusion**

The committee recommends the following executive orders issued between January 2021 and August 2022 for further review by the Attorney General and the Governor:

- Executive Order Nos. 14076 and 14079, relating to access to reproductive and other health care services, for review and challenge by the Attorney General.
- Executive Order Nos. 13990 and 14037, relating to public health and the environment, for review by the Attorney General.
- Executive Order No. 14019, relating to voting rights, for review by the Attorney General.
- Executive Order No. 14075, relating to equality for lesbian, gay, bisexual, transgender, queer, and intersex individuals, for review by the Attorney General.

### **REPORT ON CIVILLY FORFEITED PROPERTY**

The committee received a report from the Attorney General, pursuant to Section 19-03.1-36.8, relating to civil asset forfeiture 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 \$424,655 and the total proceeds from forfeited motorized vehicles or automobiles was \$20,147 from July 1, 2020, through June 30, 2021. The report indicated although forfeited firearms were seized during the reporting period, the items do not have a value until sold.

## **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 report indicated 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 2021 fiscal year, the commission provided legal counsel services in over 16,000 case assignments. The commission's 2021-23 budget consisted of \$18,969,363 from the general fund and \$1,994,850 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 during the 2019-21 biennium, the commission averaged 132 case assignments per month whereas through January 2022, the commission averaged 194 case assignments per month and the commission has approximately 67 monthly contractors handling 67 percent of annual cases.

In July 2021, the commission was tasked with representing all children, regardless of income, in delinquency matters. During the 2019-21 biennium, juvenile assignments averaged 132 per month whereas during the first 6 months of the 2021-23 biennium, the commission averaged 196 cases per month. The report indicated the commission spent an average of \$29,100 per month on juvenile-specific contracts during the 2019-21 biennium and \$41,800 per month through the first 6 months of the 2021-23 biennium.

## **NORTH DAKOTA RACING COMMISSION REPORT**

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The report indicated 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.

During the 2020 and 2021 fiscal years, the account wagering companies significantly rebounded from fiscal year 2019 with \$612,913,406 in wagers deposited with account wagering companies. The report indicated while the past 2 years have shown positive results, the commission is operating in an ever-changing environment and due to the expansion of sports wagering around the world the commission is at risk of losing licensees to states allowing sports betting. The loss of one of the major account wagering companies to a competing state could have a significant impact on the commission's ability to operate without additional support from the general fund. The report indicated roughly 95 percent of the North Dakota account wagering companies regulated wagering is generated from outside the state.

## **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. The report indicated, for the 2019-21 biennium, the lottery had a fixed appropriation of \$2,118,319 for salaries and benefits for 10 full-time equivalent (FTE) positions and \$3,136,525 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 2021-2023 biennium, the lottery's projected sales are \$64 million with transfers of \$15.84 million (\$13.6 million to the state general fund, \$640,000 to the compulsive gambling prevention and treatment fund, and \$1.6 million to the multijurisdictional drug task force grant fund). Unaudited ticket sales through December 2019, the first 6 months of the fiscal year, were \$12.06 million. Unaudited ticket sales through March 31, 2022, the first 9 months of the fiscal year, were \$22.3 million, which reflects a \$1.3 million decrease in sales, or a 5.4 percent decrease compared to the same period last year.

## **STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM**

The committee received a report from DHS, pursuant to Section 50-06-31, regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. The report indicated 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 27 individuals committed for sexual dangerousness and 11 individuals on postcommitment community release receiving outpatient treatment in their home communities.

## **STATE DEPARTMENT OF HEALTH REPORT 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 in fiscal year 2021, 10 registry identification cards were revoked, 7 of which were qualifying patients. In fiscal year 2022, 16 registry identification cards were revoked, 12 of which were qualifying patients, 3 of which were designated caregivers, and 1 of which was an agent. As of June 30, 2022, the state had 340 health care providers who completed written certifications for registered qualifying patients which was an increase of 43 compared to June 30, 2021. The two registered manufacturing facilities are located in Fargo and Bismarck with eight registered dispensaries in Devils Lake, Dickinson, Jamestown, Minot, Bismarck, Fargo, Williston, and Grand Forks. In fiscal year 2022, the total dispensary sales were \$19,970,000, 69 percent of which were dried flowers and leaves, compared to total sales of \$15,336,000 in fiscal year 2021, 72 percent of which were dried flowers and leaves.

## **TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN REPORT**

The purpose of the North Dakota Child Sexual Abuse Prevention Task Force is to develop and implement a comprehensive statewide approach to the prevention of child sexual abuse with the four main goals of the task force being prevention of child sexual abuse, strengthening intervention, strengthening the network, and strengthening offender programming. The report indicated an environmental scan regarding the processes and prospective of the prevention of child sexual abuse for the state was completed in April 2022 and there was a strong desire among those surveyed to provide child sexual abuse education to all stakeholder groups. Existing roadblocks to providing education include a lack of intellectual resources and subject matter expertise.

## **REPORT ON ATTORNEY RECRUITMENT PROGRAM**

Senate Bill No. 2233 (2021) established the Attorney Recruitment Program, codified as Chapter 27-02.2, to encourage attorneys to live and work in rural communities through an incentive payment of \$45,000 paid in equal installments over the course of 5 years. Cities with a population of 5,000 or less or counties with a population of 16,000 or less are eligible to apply for the program and applications are reviewed by an ad hoc committee of three who are appointed by the Chief Justice. The report indicated the initial recruitment process ran from February 1, 2022, through March 31, 2022. Of the three individuals participating in the program, two are located near Grafton, and the third is in the far southwest area of the state.

## **REPORT ON MEMORANDUM OF UNDERSTANDING FOR JUVENILE JUSTICE**

Section 27-20.4-27 authorizes DOCR, the Supreme Court, and the Indian Affairs Commission to enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal law. The report indicated since the signing of the agreement with the Spirit Lake Tribe, 21 youth have been referred by the Tribal Court to be staffed with the multidisciplinary team. Staff turnover remains a significant concern for the tribal court and Spirit Lake Social Services and there is a greater need for more intensive supervision of the youth involved in tribal court.

# LEGACY FUND EARNINGS COMMITTEE

Section 6 of House Bill No. 1380 (2021) created the 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; the chairmen of the House and Senate Industry, Business, and Labor 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 legacy fund earnings for tax relief, research and technological advancements, innovation, economic growth and diversification, and workforce development.

Committee members were Representatives Chet Pollert (Chairman), Joshua A. Boschee, Jeff Delzer, Craig Headland, and Mike Lefor and Senators Jessica Bell, Joan Heckaman, Jerry Klein, Ronald Sorvaag, Terry M. Wanzek, and Rich Wardner.

Senator Ray Holmberg served on the committee until his resignation from the Legislative Assembly in June 2022.

## LEGACY FUND Overview

In 2010 North Dakota voters 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. Any expenditure of principal requires approval of at least two-thirds of the members elected to each house of the Legislative Assembly, and the expenditure of principal may not exceed 15 percent of the principal balance of the legacy fund during a biennium. The Legislative Assembly may transfer funds from any source to the legacy fund, which become part of the principal of the fund. The State Investment Board is responsible for investing the principal of the legacy fund. Interest earnings accruing after June 30, 2017, are transferred to the general fund at the end of each biennium. North Dakota Century Code Section 21-10-12 provides a definition for the earnings and principal of the legacy fund. The earnings include interest, dividends, and realized gains and losses, but exclude unrealized gains and losses. The principal includes all the money in the legacy fund not identified as earnings.

### Legacy and Budget Stabilization Fund Advisory Board

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 and providing a direct benefit to the state by investing a portion of the principal in the state. The advisory board makes recommendations to the State Investment Board, including asset allocations and investment policies. Section 21-10-11, as amended by House Bill No. 1425 (2021) requires the asset allocation plan of the legacy fund to include a target allocation of 10 percent for in-state fixed income investments and a target allocation of 10 percent for in-state equity investments. The advisory board regularly reviews and approves the investment policy statement with the most recent policy statement approved in February 2021.

### Additional Transfers to the Legacy Fund

House Bill No. 1451 (2011) created the strategic investment and improvements fund to provide funding for one-time expenditures related to state infrastructure or initiatives that improve the efficiency and effectiveness of state government. For the 2011-13 and 2013-15 bienniums, if the balance of the strategic investment and improvements fund exceeded \$300 million at the end of any month, 25 percent of any revenues deposited in the strategic investment and improvements fund were transferred to the legacy fund. House Bill No. 1377 (2015) removed the requirement to transfer additional funding from the strategic investment and improvements fund to the legacy fund. While the provisions were in effect, approximately \$319 million was transferred from the strategic investment and improvements fund to the legacy fund.

### Allocation of Legacy Fund Earnings

Pursuant to constitutional provisions, legacy fund earnings are transferred to the general fund at the end of each biennium after June 30, 2017. House Bill No. 1380 (2021) created a process to immediately transfer any legacy fund earnings deposited in the general fund to a newly created legacy earnings fund. The bill also established a percent of market value calculation to determine the amount of legacy fund earnings available for spending each biennium. The percent of market value is based on 7 percent of the 5-year average of legacy fund assets. The earnings available for spending will be transferred from the legacy earnings fund to other state special funds and designated for other purposes determined by the Legislative Assembly. A portion of the excess earnings will be

retained in the legacy earnings fund as a reserve for any potential future bond payments, and up to \$100 million of excess earnings will be transferred to the legacy fund to become part of the principal with the remaining excess earnings transferred to the strategic investment and improvements fund.

## **Prior Studies**

### **2013-14 Interim**

Senate Bill No. 2124 (2013) provided for a study of methods to assure that the legacy fund provides the lasting benefits intended by the voters in enacting the constitutional measure. The Government Finance Committee recommended House Bill No. 1033 (2015) to provide definitions for constitutional provisions relating to the legacy fund, to clarify the process used to determine limitations on expenditures from the legacy fund, and to provide a method to transfer earnings back to the legacy fund to grow the fund until oil and gas development activity declines. The Legislative Assembly approved House Bill No. 1033; however, the Governor vetoed the bill.

### **2019-20 Interim**

Senate Bill No. 2015 (2019) created a Legacy Fund Earnings Committee to study the potential uses of legacy fund earnings. The committee reviewed the history and status of the legacy fund. The committee 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 committee also received comments regarding proposed uses of legacy fund earnings.

As a result of the study, the committee recommended:

- House Bill No. 1037 (2021) 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; and
- House Bill No. 1038 (2021) relating to a Legacy Fund Earnings Committee.

The Legislative Assembly did not approve House Bill Nos. 1037 and 1038; however, House Bill No. 1380, which was approved, included a percent of market value calculation, created a legacy earnings fund, and provided for the Legacy Fund Earnings Committee to study selected uses of legacy fund earnings.

## **Status**

During the budgeting process for the 2019-21 biennium, the 2019 Legislative Assembly included \$100 million of estimated legacy fund earnings in the general fund revenue forecast. The 2021 Legislative Assembly revised the general fund revenue forecast for the 2019-21 biennium to include \$736 million of estimated legacy fund earnings, an increase of \$636 million compared to the original estimate. The actual legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium totaled \$871.69 million. As a reference, the actual legacy fund earnings transferred to the general fund at the end of the 2017-19 biennium, the 1<sup>st</sup> biennium in which earnings were transferred, was \$455.26 million.

Senate Bill No. 2362 (2019) included a contingent transfer of \$64.37 million from legacy fund earnings deposited in the general fund to the common schools trust fund if the legacy fund earnings transferred to the general fund at the end of the 2019-21 biennium were at least \$164.37 million. The 2019 Legislative Assembly approved the contingent transfer to correct a shortfall of oil extraction tax revenues deposited in the common schools trust fund in prior bienniums. Since the actual legacy fund earnings were \$871.69 million and exceeded the threshold of \$164.37 million, \$64.37 million of legacy fund earnings deposited in the general fund at the end of the 2019-21 biennium was transferred to the common schools trust fund.

Because House Bill No. 1380 (2021) established a percent of market value calculation and transferred legacy fund earnings immediately from the general fund to a newly created legacy earnings fund, the 2021 legislative revenue forecast did not reflect any estimated legacy fund earnings as general fund revenue for the 2021-23 biennium.

Based on information reported by the Retirement and Investment Office, the balance of the legacy fund was \$7.9 billion as of June 30, 2022, including \$568.7 million of earnings available to transfer to the legacy earnings fund at the end of the biennium. The investment returns for the legacy fund for fiscal year 2022 reflect a loss of 10.1 percent compared to the benchmark's loss of 10.5 percent.



## **COMMITTEE CONSIDERATIONS**

### **Budget Information**

#### **Legislative Council**

The committee received information from the Legislative Council regarding the state budget and a comparison of ongoing revenues and appropriations. Ongoing general fund appropriations have exceeded ongoing general fund revenues since the 2015-17 biennium. The 2021-23 biennium general fund budget was balanced with one-time revenue sources, including a transfer from the strategic investment and improvements fund and the beginning balance. For the 2021-23 biennium, ongoing general fund revenues have exceeded the legislative forecast by 22 percent through July 2022. If ongoing general fund revenues continue to exceed the legislative forecast by 22 percent for the remainder of the biennium, ongoing general fund appropriations may exceed ongoing general fund revenues by \$400 million. The budgetary gap between ongoing general fund appropriations and ongoing general fund revenues may decrease to \$290 million in the 2023-25 biennium based on preliminary estimates for potential increases in ongoing general fund appropriations and revenues.

The committee reviewed legacy fund earnings scenarios based on the percent of market value calculation under Section 21-10-13. The percent of market value calculation for the 2023-25 biennium spending from the legacy earnings fund is \$486.6 million based on 7 percent of the 5-year average of legacy fund assets as of June 30, 2022. Using the actual legacy fund earnings for the 2021-23 biennium through June 30, 2022, \$82.1 million of earnings would be available to be retained in the legacy earnings fund as a reserve for future bond payments in addition to the \$486.6 million of earnings available for spending.

#### **Tax Information**

The Tax Department provided information on the status of the income tax credit authorized during the 2021 special legislative session in House Bill No. 1515. For fiscal year 2022, \$103.1 million of tax credits was claimed with approximately 277,000 tax returns eligible for a full or partial credit of up to \$350 for single filer returns and \$700 for married filing jointly returns. The committee reviewed the information as a part of its assigned responsibility to consider tax relief as a potential use of legacy fund earnings.

Based on information from the Tax Department, the oil extraction tax rate increased from 5 to 6 percent effective for June 2022 oil production because oil prices exceeded the "trigger" price for 3 consecutive months. As a result, the state may receive \$140 million of additional oil extraction tax collections if the higher tax rate is effective for oil production between June and October 2022. After the allocations to the Three Affiliated Tribes of the Fort Berthold Reservation, 30 percent of the additional tax collections are allocated to the legacy fund, providing additional revenue to the legacy fund during the 2021-23 biennium.

#### **Bond Issuances**

The committee received information from the Public Finance Authority regarding bonds issued to support infrastructure projects and programs as authorized in House Bill No. 1431 (2021). The Public Finance Authority issued \$710.1 million of bonds to finance \$680 million of authorized projects and programs, including \$389.2 million issued in December 2021 with a net interest rate of 2.71 percent and \$320.9 million issued in July 2022 with a net interest rate of 4.58 percent. The biennial repayment cost of the bonds is approximately \$101.8 million. Pursuant to the allocations from the legacy earnings fund, \$150 million is transferred to a legacy sinking and interest fund for the bonds payments with any remaining amounts available for a transfer to the Public Employees Retirement System main system plan.

#### **Other State Budget Information**

The Department of Mineral Resources provided information to the committee indicating oil drilling activity in North Dakota may continue for 10 to 20 years after which enhanced oil recovery methods will be needed to further develop oil production in the state. Since the legacy fund receives allocations from oil and gas tax revenues, changes in oil development activity may impact the revenue deposited in the legacy fund significantly.

The committee received information from the Department of Transportation regarding the status of the state highway fund. Approximately 60 percent of the revenue for the state highway fund is derived from the highway tax distribution fund. Since the allocations from the legacy earnings fund include an allocation the highway tax distribution fund, the state highway fund may have additional funding available for state highway projects.

The committee received information on the Clean Sustainable Energy Authority, which provides financial support for clean energy projects. Section 21-10-13 includes an allocation of up to \$30 million from the legacy earnings fund to the clean sustainable energy fund to support additional projects.

The committee received information from the Department of Commerce regarding the status of the innovation loan fund to support technology advancement. The fund had a balance of approximately \$27 million in March 2022, and the department anticipates the fund could be self-sustaining when the balance reaches approximately \$100 million. A portion of legacy fund earnings may be allocated to the innovation loan fund under Section 21-10-13.

The Public Employees Retirement System provided information on the actuarial funded ratio of the main system plan, which had a ratio of 71.1 percent as of June 2021. Any unspent money in the legacy sinking and interest fund after bond payments is transferred to the main system plan, and \$48.2 million may be available for a transfer during the 2023-25 biennium to increase the actuarial funded ratio.

### **Proposed Uses of Legacy Fund Earnings**

The committee received comments requesting support for additional township funding and to provide an allocation from the legacy earnings fund for county and township bridge projects.

Committee members also submitted proposals regarding uses of legacy fund earnings. One proposal included using allocations from the legacy earnings fund to support one-time initiatives to improve health and human services programs, which potentially could decrease future ongoing costs for the programs. An example of a one-time initiative to improve health and human services programs included a pilot program to provide temporary support for families transitioning out of state and federal economic assistance programs, which could have estimated savings of \$15 million per year if the program resulted in a 10 percent reduction in caseloads for the Department of Human Services.

A committee member submitted a proposal to provide a separate allocation from the legacy earnings fund to the Public Employees Retirement System main system plan rather than the current method of providing a transfer from the legacy sinking and interest fund after the bond payments.

Another committee member proposal would create an economic diversification research fund and a workforce development and enrichment fund to provide specific criteria for the eligible uses of funding allocated from the legacy earnings fund for university research programs and workforce enrichment initiatives.

### **Recommendations**

The committee makes no recommendation regarding the study of proposed uses of legacy fund earnings.

# LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee 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 on a quarterly basis during the interim. 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, Joan Heckaman, Jordan Kannianen, and Judy Lee and Representatives Mary Adams, Cole Christensen, Mary Johnson, Keith Kempenich, Gary Kreidt, Scott Louser, Jeffery J. Magrum, Mike Nathe, Emily O'Brien, Jim Schmidt, and Wayne A. Trottier.

During the 2021-22 interim, the State Auditor's office (SAO) and independent accounting firms presented 55 operational audits conducted using performance audit standards and 73 financial or information technology application audit reports. An additional 18 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 2021-22 interim:

1. Receive the annual audit report for the State Fair Association (Section 4.1-45-17).
2. 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.)
3. 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 (Sections 10-19.1-152 and 45-10.2-115).
4. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Life Skills and Transition Center (Sections 50-06.3-08 and 25-04-17).
5. 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.)
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 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).
9. Determine necessary performance audits by the State Auditor (Section 54-10-01).
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).

13. Receive reports from the State Auditor regarding contracts to conduct prescription drug coverage performance audits, performance audit results, and audit reports issued (Section 6 of House Bill No. 1004 (2021)).

## **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 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, SAO developed and the committee began receiving a 1-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 information and testimony from the State Auditor and private accounting firms regarding suggested changes to guidelines for audits of state agencies, which include guidelines for financial statement audits and guidelines for operational audits using performance auditing standards. The committee approved, for audit periods on or after June 30, 2022, except for audits currently under contract:

1. Auditors conducting financial statement audits of state agencies replace the six audit-related questions/responses and eight audit-related communications within the audit report with a separate audit summary that identifies the purpose of the audit, the type of audit opinion, findings and recommendations, status of prior recommendations, explanations of significant audit adjustments and misstatements, disagreements with management or difficulties encountered during the audit, other audit report highlights, and the cost of the audit compared to the prior audit.
2. The State Auditor conducting operational audits using performance auditing standards of state agencies discontinue including the six audit-related questions/responses and eight audit-related communications in the audit report and expand the audit summary to identify the areas reviewed and testing conducted even if there are no related findings or recommendations.

At each committee meeting, 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 Annual Comprehensive 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, 2020*, and the *State of North Dakota Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2021*. 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, 2020. An unmodified opinion was issued on the financial statements. As of June 30, 2020, the University System had total assets of \$2.3 billion and total liabilities of \$837.9 million, resulting in total net assets of \$1.37 billion. The total net assets increased \$30 million during fiscal year 2020.

The committee received the University System's annual financial report for the fiscal year ended June 30, 2021. An unmodified opinion was issued on the financial statements. As of June 30, 2021, the University System had total assets of \$2.6 billion and total liabilities of \$1.1 billion, resulting in total net assets of \$1.5 billion. The total net assets increased \$100 million during fiscal year 2021.

## **PERFORMANCE AUDITS AND EVALUATIONS**

The committee did not receive any performance audits conducted by SAO pursuant to authority within Chapter 54-10.

## **ATTORNEY GENERAL LEASED FACILITY INVESTIGATIVE REPORT**

At the request of the Budget Section, the committee received background information regarding certain lease agreements entered by the Attorney General's office. The committee received information from representatives of the Attorney General, the Office of Management and Budget, Parkway Property Management, and the State Auditor. The committee was informed the Attorney General leased a new facility which included the cost to remodel the facility for its use, which incurred cost overruns. The committee asked the State Auditor to work with the Attorney General to gather and review documentation and other information related to the lease agreement and the remodeling and construction of facilities leased by the Attorney General located at 1720 Burlington Drive, Bismarck. The committee toured the facility and met with division directors from the Bureau of Criminal Investigation, Consumer Protection and Antitrust Division, and North Dakota Lottery. The committee received the State Auditor's investigative report, which indicated a violation of law relating to the expenditure of funds may have occurred. Major findings of the report included:

- Division directors were not involved in lease negotiations, leading to numerous changes throughout the remodeling process, which added to overall project cost;
- A number of invoices had minimal detail, leading to questionable contractor costs and possible double-billing for some expenses;
- Services may have been completed by a contractor without a contracting license; and
- The possibility of recovering deleted Attorney General emails.

The report identified cost overruns relating to the remodeling and construction associated with the leased facility of \$1,742,210. Of this amount, \$1,342,210 was paid from unspent appropriation authority available during the 2019-21 biennium and from continuing appropriations as follows:

Line Item/Program	Amount
Operating expenses	\$470,187
Law enforcement	197,900
Criminal justice information system	325,876
Lottery	348,247
Total	\$1,342,210

Of the \$1,342,210 paid during the 2019-21 biennium, \$602,185 was from the general fund and \$740,025 was from special funds.

The remaining \$400,000 related to the cost overruns was added to the lease payment to be paid by the Attorney General over the 5-year lease term.

The report identified \$2.4 million as the total cost of the Attorney General's relocation to the new leased facility and included:

Description of Expense	Amount
Facility cost overruns	\$1,742,210
Moving of heating, ventilation, and air conditioning	150,000
Engineer's original plan	5,000
Moving and other costs	496,359
Total	\$2,393,569

Pursuant to Section 54-35-02.2, the committee forwarded the State Auditor's report to the Attorney General for additional investigation and suggested the Attorney General contract with an independent organization to conduct the investigation of the lease agreement and remodeling and construction costs.

### OTHER INFORMATION

The committee received information regarding State Auditor fees and the impact to state agencies and other public entities. The State Auditor reported implementing an hourly rate fee structure which results in increased cost to some entities. Section 54-10-01 requires 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.

### AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2021-22 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Addiction counselor internship loan program	June 30, 2019 and 2020	August 19, 2021
Addiction counselor internship loan program	June 30, 2020 and 2021	December 8, 2021
Adjutant General	June 30, 2019 and 2020	December 8, 2021
Aeronautics Commission	June 30, 2020 and 2021	March 31, 2022
Ag Experiment Stations and NDSU Extension Service and Northern Crop Institute	June 30, 2020 and 2021	June 29, 2022
Ag PACE fund	June 30, 2019 and 2020	August 19, 2021
Ag PACE fund	June 30, 2020 and 2021	December 8, 2021
Attorney General	June 30, 2019 and 2020	March 31, 2022
Bank of North Dakota	December 31, 2019 and 2018	August 19, 2021
Bank of North Dakota	December 31, 2020 and 2021	June 29, 2022
Beginning farmer revolving loan fund	December 31, 2019 and 2018	August 19, 2021
Beginning farmer revolving loan fund	December 31, 2020	June 29, 2022
Bismarck State College	June 30, 2019 and 2020	August 19, 2021
College SAVE (Bank of North Dakota)	December 31, 2019 and 2020	August 19, 2021
Commission on Legal Counsel for Indigents	June 30, 2020 and 2021	September 27, 2022
Community water facility loan fund	December 31, 2019 and 2018	August 19, 2021
Comprehensive Health Association of North Dakota	December 31, 2018 and 2019	August 19, 2021
COVID-19 partnership in assisting community expansion (PACE) loan program	June 30, 2020 and 2021	December 8, 2021
Dakota College at Bottineau	June 30, 2019 and 2020	December 8, 2021
Department of Agriculture	June 30, 2020 and 2021	September 27, 2022
Department of Career and Technical Education	June 30, 2020 and 2021	September 27, 2022
Department of Commerce	June 30, 2020 and 2021	June 29, 2022
Department of Corrections and Rehabilitation	June 30, 2020 and 2021	June 29, 2022
Department of Environmental Quality	June 30, 2020 and 2021	March 31, 2022
Department of Financial Institutions	June 30, 2019 and 2020	August 19, 2021
Department of Human Services	June 30, 2020 and 2021	September 27, 2022
Department of Labor and Human Rights	June 30, 2020 and 2021	June 29, 2022
Department of Public Instruction	June 30, 2020 and 2021	September 27, 2022
Department of Trust Lands	June 30, 2019 and 2020	August 19, 2021
Department of Trust Lands	June 30, 2020 and 2021	December 8, 2021
Department of Veterans' Affairs	June 30, 2017 and 2018	August 19, 2021
Department of Water Resources	June 30, 2020 and 2021	September 27, 2022
Development Fund, Inc.	June 30, 2019 and 2020	August 19, 2021

<b>Agency</b>	<b>Audit Report Date</b>	<b>Meeting Date Accepted</b>
Dickinson State University	June 30, 2019 and 2020	August 19, 2021
Ethics Commission	June 30, 2020 and 2021	March 31, 2022
Governor's office	June 30, 2020 and 2021	June 29, 2022
Guaranteed Student Loan Program	December 31, 2020 and 2021	June 29, 2022
Guaranteed Student Loan Program, North Dakota	September 30, 2017 and December 31, 2018	August 19, 2021
Highway Patrol	June 30, 2019 and 2020	December 8, 2021
Housing Finance Agency	June 30, 2019 and 2020	August 19, 2021
Housing Finance Agency	June 30, 2020 and 2021	December 8, 2021
Housing incentive fund	June 30, 2019 and 2020	August 19, 2021
Housing incentive fund	June 30, 2020 and 2021	December 8, 2021
Indian Affairs Commission	June 30, 2019 and 2020	August 19, 2021
Industrial Commission	June 30, 2019 and 2020	August 19, 2021
Information Technology Department	June 30, 2019 and 2020	August 19, 2021
Infrastructure revolving loan fund	June 30, 2019 and 2020	August 19, 2021
Infrastructure revolving loan fund	June 30, 2020 and 2021	December 8, 2021
Innovation technology loan fund (LIFT) (Bank of North Dakota)	June 30, 2020	August 19, 2021
Insurance Department	June 30, 2020 and 2021	June 29, 2022
Job Service North Dakota	June 30, 2019 and 2020	August 19, 2021
Judicial Branch	June 30, 2020 and 2021	June 29, 2022
Lake Region State College	June 30, 2020 and 2021	September 27, 2022
Legislative Assembly	June 30, 2020 and 2021	December 8, 2021
Legislative Council	June 30, 2020 and 2021	December 8, 2021
Mayville State University	June 30, 2020 and 2021	September 27, 2022
Medical facility infrastructure loan program	June 30, 2019 and 2020	August 19, 2021
Medical facility infrastructure loan program	June 30, 2020 and 2021	December 8, 2021
Mill and Elevator Association	June 30, 2019 and 2020	August 19, 2021
Mill and Elevator Association	June 30, 2020 and 2021	December 8, 2021
Minot State University	June 30, 2019 and 2020	December 8, 2021
North Dakota Milk Marketing Board	June 30, 2019 and 2020	August 19, 2021
North Dakota Annual Comprehensive Financial Report	June 30, 2020 and 2021	March 31, 2022
North Dakota Barley Council	June 30, 2019 and 2020	August 19, 2021
North Dakota Beef Commission	June 30, 2019 and 2020	August 19, 2021
North Dakota Beef Commission	June 30, 2020 and 2021	December 8, 2021
North Dakota Comprehensive Annual Financial Report	June 30, 2019 and 2020	August 19, 2021
North Dakota Council on the Arts	June 30, 2020 and 2021	September 27, 2022
North Dakota Dairy Promotion Commission	June 30, 2019 and 2020	August 19, 2021
North Dakota Dry Bean Council	June 30, 2019 and 2020	August 19, 2021
North Dakota Dry Pea and Lentil Council	June 30, 2019 and 2020	August 19, 2021
North Dakota Ethanol Council	June 30, 2019 and 2020	August 19, 2021
North Dakota Forest Service	June 30, 2020 and 2021	June 29, 2022
North Dakota Lottery	June 30, 2019 and 2020	August 19, 2021
North Dakota Lottery	June 30, 2020 and 2021	June 29, 2022
North Dakota Oilseed Council	June 30, 2019 and 2020	August 19, 2021
North Dakota Potato Council	June 30, 2019 and 2020	August 19, 2021
North Dakota School for the Deaf	June 30, 2020 and 2021	March 31, 2022
North Dakota Soybean Council	June 30, 2019 and 2020	August 19, 2021
North Dakota Soybean Council	June 30, 2020 and 2021	December 8, 2021
North Dakota State College of Science	June 30, 2020 and 2021	September 27, 2022
North Dakota State Fair Association	September 30, 2020	December 8, 2021
North Dakota State University	June 30, 2020 and 2021	September 27, 2022
North Dakota Stockmen's Association	December 31, 2020 and 2021	September 27, 2022
North Dakota University System Annual Financial Report	June 30, 2019 and 2020	August 19, 2021
North Dakota University System Annual Financial Report	June 30, 2021	March 31, 2022
North Dakota University System Office	June 30, 2019 and 2020	December 8, 2021
North Dakota Veterans' Home	June 30, 2020 and 2021	September 27, 2022
North Dakota Wheat Commission	June 30, 2019 and 2020	August 19, 2021
Office of Administrative Hearings	June 30, 2019 and 2020	June 29, 2022
Office of Management and Budget	June 30, 2020 and 2021	September 27, 2022
Office of State Tax Commissioner	June 30, 2020 and 2021	September 27, 2022
PACE fund	June 30, 2019 and 2020	August 19, 2021
Parks and Recreation Department	June 30, 2020 and 2021	September 27, 2022
Protection and Advocacy Project	June 30, 2019 and 2020	August 19, 2021
Public Employees Retirement System	June 30, 2019 and 2020	August 19, 2021

<b>Agency</b>	<b>Audit Report Date</b>	<b>Meeting Date Accepted</b>
Public Employees Retirement System	June 30, 2020 and 2021	March 31, 2022
Public Employees Retirement System Schedules of Employer Allocations and OPEB Amounts by Employer	June 30, 2021	March 31, 2022
Public Employees Retirement System Schedules of Employer Allocations and Pension Amounts by Employer	June 30, 2021	March 31, 2022
Public Finance Authority	December 31, 2019 and 2020	December 8, 2021
Public Service Commission	June 30, 2020 and 2021	December 8, 2021
Racing Commission	June 30, 2020 and 2021	June 29, 2022
Rebuilders loan program	June 30, 2019 and 2020	August 19, 2021
Rebuilders loan program	June 30, 2020 and 2021	December 8, 2021
Retirement and Investment Office	June 30, 2019 and 2020	August 19, 2021
Retirement and Investment Office	June 30, 2020 and 2021	March 31, 2022
Retirement and Investment Office - North Dakota Teachers' Fund for Retirement Schedules of Employer Allocations and Pension Amounts by Employer	June 30, 2021	March 31, 2022
School construction assistance revolving loan fund	June 30, 2019 and 2020	August 19, 2021
Secretary of State	June 30, 2019 and 2020	August 19, 2021
Securities Commissioner	June 30, 2019 and 2020	August 19, 2021
Small employer loan fund (SELF)	June 30, 2020 and 2021	December 8, 2021
Small employer loan fund (SELF) (Bank of North Dakota)	June 30, 2020	August 19, 2021
State Auditor	June 30, 2020 and 2021	March 31, 2022
State Building Authority	June 30, 2020 and 2021	December 8, 2021
State Historical Society	June 30, 2019 and 2020	August 19, 2021
State Historical Society of North Dakota Foundation	June 30, 2021	December 8, 2021
State Seed Department	June 30, 2019 and 2020	August 19, 2021
State Treasurer's office	June 30, 2020 and 2021	June 29, 2022
Student loan trust	June 30, 2019 and 2020	August 19, 2021
Student loan trust	June 30, 2020 and 2021	December 8, 2021
University of North Dakota	June 30, 2019 and 2020	December 8, 2021
Upper Great Plains Transportation Institute	June 30, 2020 and 2021	June 29, 2022
Valley City State University	June 30, 2020 and 2021	September 27, 2022
Williston State College	June 30, 2020 and 2021	September 27, 2022
Workforce Safety and Insurance	June 30, 2019 and 2020	August 19, 2021
Workforce Safety and Insurance	June 30, 2020 and 2021	December 8, 2021



# 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 2023 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), Joan Heckaman, Kathy Hogan, Jerry Klein, Karen K. Krebsbach and Larry Luick and Representatives Joshua A. Boschee, Kim Koppelman, Scott Louser, Alisa Mitskog, and Chet Pollert.

Senator Ray Holmberg served on the committee until his resignation from the Legislative Assembly in June 2022, and Senator Erin Oban served on the committee until her resignation from the Legislative Assembly in March 2022.

## SPECIAL SESSION ARRANGEMENTS

The committee approved arrangements to accommodate either a special or reconvened session for redistricting and submitted its recommendations to the Legislative Management. The Legislative Management accepted the committee's report on November 1, 2021. The committee reviewed four areas of consideration for the special session--legislative rules, session employees, a bill draft regarding printing services, and miscellaneous matters.

### Legislative Rules

The committee received testimony regarding the legislative rule amendments adopted during previous special sessions. The amendments primarily addressed the introduction of measures, length of time to consider a measure after it is reported from committee, length of time to reconsider a measure, and special committees during the special session. The rules recommended by the committee required bills and resolutions, other than those introduced by the Legislative Management, to be introduced through the Delayed Bills Committee to limit bills introduced during the special session to those of significant importance; eliminated specific meeting days for committees to allow committee chairmen or a majority of the committee members to call a committee meeting as needed; authorized a measure to be considered on the same day the measure is reported from committee or placed on the consent calendar; allowed an amendment to a redistricting bill made upon second reading in the Senate to be proposed in concept, only necessitating the drafting of

legal descriptions for floor amendments supported by the majority of Senate members; authorized a measure to be transmitted from one house to another immediately after approval; allowed either house to consider receding more than once on the same day before a conference is called; required the return of a fiscal note within 1 day of the request rather than 5 days; and established a Joint Legislative Redistricting Committee and a Joint Technical Corrections Committee and allowed the House and Senate Appropriations Committees and procedural committees to meet during the special session.

### **Session Employees**

The committee reviewed the employee positions filled during the 2011 special session and recommended the House Employment Committee be authorized to hire up to 11 employees and the Senate Employment Committee be authorized to hire up to 10 employees for the special session at the compensation levels established by Senate Concurrent Resolution No. 4003 (2021).

### **Printing Services**

The committee recommended a bill draft to allow the legislative branch the option of having legislative materials printed by Central Duplicating Services or soliciting bids for a private printing vendor. The option of having materials printed by Central Duplicating Services was proposed due to no bids being received for printing services for the 67<sup>th</sup> Legislative Assembly, resulting in Central Duplicating Services providing printing services for the 67<sup>th</sup> Legislative Assembly. The bill draft was introduced as Senate Bill No. 2347 and was approved during the 2021 special legislative session.

### **Miscellaneous Matters**

The committee recognized the nature of the special or reconvened session would be limited in scope. Many services or items normally available during a regular session would not be feasible or economical during the special or reconvened session. The committee recommended measures, journals, calendars, and hearing schedules be accessed online and through the Legislator's Automated Work Station (LAWS) and the North Dakota Legislative Daily application rather than printed. The full journals were printed after the special session adjourned.

## **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 a request by We the People to use the House Chamber for the North Dakota High School Government Competition on January 12 or 19, 2022, subject to the needs of the legislative branch; a request by the Marketplace for Kids to use Memorial Hall and Legislative Hall for a student exhibit display on December 6, 2022; a request by the North Dakota High School Activities Association to use both legislative chambers for the 2022 North Dakota High School State Student Congress on November 3-4, 2022, and both legislative chambers and committee rooms for the 2023 North Dakota High School State Student Congress on November 2-3, 2023; and a request from the North Dakota District Court for the South Central Judicial District - Burleigh County to use the House Chamber for a trial on August 2-20, 2021.

The committee reviewed maintenance and replacement needs for the legislative chambers. Chairs in the legislative chambers were last replaced in 1998 and are beginning to fail. Replacement of chairs in the legislative chambers would consist of 141 chairs for legislators and additional chairs for legislative chamber staff. The committee viewed samples of chairs available at various price points and recommends the Legislative Management prioritize the replacement of chairs in the legislative chambers by including the cost of replacing legislative chamber chairs, at a price point of \$500 per chair, in the Legislative Assembly's 2023-25 biennium budget.

The committee reviewed the condition of the carpeting in the legislative chambers. Carpeting was last replaced in the legislative chambers in 1998. Carpeting is very worn and remnants to replace damaged areas are no longer available. The estimated cost to replace carpeting in the House is \$65,000 and the cost to replace carpeting in the Senate is \$45,000. The committee recommends the Legislative Management prioritize the replacement of carpeting in the legislative chambers by including the cost of replacing legislative chamber carpeting in the Legislative Assembly's 2023-25 biennium budget.

The committee reviewed the condition of the woodwork in the legislative chambers. The finishing on the woodwork in the front of the legislative chambers shows signs of fading and wear. The estimated cost to refinish the woodwork in the front of both legislative chambers is \$30,000. The committee recommends the Legislative Management prioritize

refinishing the woodwork in the front of the legislative chambers by including the cost of woodwork refinishing in the Legislative Assembly's 2023-25 biennium budget.

The committee acknowledged the appropriation to address maintenance items in the chambers might be large, but additional costs might arise if maintenance is deferred and it is uncertain whether funds for maintenance will be available in future bienniums. The committee was informed costs relating to painting the legislative chambers could be included in the costs of updating the air handling system in the legislative chambers, which is funded with federal funds. The committee considered updates to legislative chamber desks and the addition of ramps in the legislative chambers but was informed an architect would need to be hired to provide an estimate for these larger renovation items.

### **Legislative Committee Rooms and Workspaces**

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 space for the eight new information technology employees for the Legislative Council. Additional space is available on the ground floor of the Capitol for committee clerk workspaces, which would be better suited to the changing roles of committee clerks. Converting committee clerk workstations and part of the library in the Legislative Council area would accommodate additional information technology staff offices, workspaces, and information technology equipment storage needs. The committee approved conversion of these spaces for Legislative Council information technology staff needs, which was completed during the 2021-22 interim.

The committee discussed the age of chairs in committee rooms, which were last replaced in 2006, and the need for up to 40 chairs for judicial wing committee rooms. House standing committees met in the four rooms added in the judicial wing during the 2021 legislative session and legislation was approved during the 2021 special session to allow the Legislative Assembly to retain the use of those four rooms. Committee clerks have office space within the rooms in the judicial wing, but additional workspaces are needed for 16 legislative session staff due to conversion of clerk workstations in the Legislative Council area for information technology staff purposes and the loss of the stage area in the Brynhild Haugland Room. The committee reviewed the manner in which the Lewis and Clark Room, Medora Room, and Roosevelt Park Room could be reconfigured to accommodate additional committee clerk workspaces. The committee recommends reconfiguring the Roosevelt Park Room to accommodate additional legislative session staff workspaces.

### **Accessibility Improvements**

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 J2 Studio, a Bismarck architecture and design firm, reviewed areas of the Capitol building for ADA compliance and recommended replacing double doors on meeting rooms with larger, single doors; moving digital room signage higher to accommodate the addition of ADA compliant signage containing braille; providing assistive listening devices in all public meeting rooms; removing furniture located too close to doors and aisles; reconfiguring restrooms for ADA compliance; and installing ramps and electronic door openers. The committee expressed a preference for installing up to four family restrooms with care tables in the space occupied by the Missouri River Room. The committee was informed enhancements needed for ADA compliance would be completed before the start of the legislative session and funding likely would be sought during the 2023 legislative session for ADA enhancements to other state-owned buildings in Bismarck.

### **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 ASSEMBLY POLICY AGAINST WORKPLACE HARASSMENT**

The committee reviewed the *North Dakota Legislative Assembly Policy Against Workplace Harassment* and the checklist of measures that must be taken when an allegation of harassment is made. The policy is in place to protect legislators, employees, interns, and third parties; comply with federal and state laws; protect the integrity and reputation of the Legislative Assembly; address public concerns; and prevent the need to expend state resources to defend lawsuits, pay settlements, or pay court-awarded compensation. The committee received information regarding recent state legislature liability for harassment complaints, including the risk of liability for failing to address known harassment, even in situations in which a written complaint is not filed. The committee reviewed common reasons a complaint of harassment is not filed, including the fear of retaliation, which has been recognized by the courts as a legitimate reason for not filing a complaint.

The committee reviewed information pertaining to due process for an individual accused of harassment. Constitutional due process is required when an individual will be deprived of life, liberty, or property. The United States Supreme Court has held public office is not property and injury to reputation only is not sufficient to establish a deprivation of liberty. Generally, a legislator is not deprived of life, liberty, or property by legislative sanctions or expulsion.

The committee considered improvements to the policy. The committee approved revisions to the policy and checklist to add the Speaker of the House and the President Pro Tempore as the contact person in each respective chamber if a complaint of harassment is made against the Majority or Minority Leader. The committee also approved revisions to add language requiring separate, additional training sessions for contact persons regarding receiving and processing complaints. The committee determined additional changes could be accomplished administratively, without amending the policy. Administrative considerations included following up with individuals who file complaints of harassment to ensure retaliation is not occurring.

The committee recommends amending Joint Rule 901, regarding the workplace harassment policy, to add the Speaker of the House and the President Pro Tempore as the contact person for situations in which a complaint of harassment is against a Majority or Minority Leader.

## **LEGISLATIVE COMPENSATION**

### **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, and legislative compensation increases compared to inflation and state employee salary increases. The committee recommended the 2023-25 biennium budget of the Legislative Assembly include funding for changes to legislative compensation to provide for adjustments of 2 percent for the 1<sup>st</sup> year and 3 percent for the 2<sup>nd</sup> year of the 2023-25 biennium, subject to revision if necessary during the 2023 legislative session to the appropriate level as compared to state employee salary increases, and the necessary related statutory changes. The committee took into consideration the increased costs associated with rapidly rising inflation and the tone the committee's recommendation sets regarding state employee salary increases when making its recommendation.

### **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 2023 legislative session.

The committee made no changes to the legislative expense reimbursement policy that was in place for the previous five 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.

### **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.

## **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 for purchasing old computers, and authorizes a fee for acquiring a replaced computer and a computer assistance fee. The committee approved the policy with no recommended changes.

### **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.

### **Legislator Computer Training**

The tentative organizational session agenda approved by the committee continues the laptop computer and tablet training classes for returning legislators beginning at 9:00 a.m. on Monday, December 5, 2022, and at 12:30 p.m. and 2:45 p.m. on Tuesday, December 6, 2022. The agenda also provides for laptop computer and tablet distribution and training session for new legislators at 3:15 p.m. on Monday, December 5, 2022, and 12:00 noon and 2:30 p.m. on Wednesday, December 7, 2022.

### **Information Technology Initiatives**

The committee was informed new digital signage has been installed in the legislative spaces in the Capitol, the Legislative Council acquired portable equipment to livestream meetings held outside the Capitol, and information technology staff has improved disaster recovery measures by implementing a secondary location for server equipment. Assistive listening technology has been added in each committee room and enhanced in the legislative chambers. This technology allows for devices checked out by the public to be used in any legislative meeting room in the Capitol. The legislative branch network domain has changed to STAGEnet Legis and the information technology domain has changed to ndlegis.gov, which required technology staff to update each legislator's laptop and mobile device. The legislative branch website also has been updated to enhance functionality, increase mobile compatibility, and provide more robust search capabilities. The legislative branch video website introduced a closed caption search feature that allows text search on video meetings.

## **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.

### **Bill, Resolution, Journal, and Bill Status Report Subscriptions**

During the 2021 legislative session, four entities paid to receive a set of bills and resolutions from the bill and journal room; one entity paid to receive a set of journals; and no entities paid to receive bill status reports, which provide information on the progress of bills and resolutions and measure sponsors. The committee established the following subscription 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 \$560 for bill status reports. The number of subscribers has been decreasing, likely because the documents are available on the legislative branch website.

In light of increasing printing costs, the committee determined for the 2023 legislative session, bills, resolutions, daily journals, the journal index, and bill status reports will be printed only upon request, except as required by House and Senate Rules 204. The committee reached out to entities entitled to receive hard copies of bound journals under House and Senate Rules 204 to gauge those entities' interest in continuing to receive hard copies. All entities except the Attorney General's office expressed a preference to continue receiving hard copies. The Legislative Council determined its number of hard copies could be reduced by half.

The committee recommends amendments to House and Senate Rules 204 to reduce the total number of hard copies of the journal required to be distributed to 24 copies. Language also was added to reduce the number of hard copies sent to the State Library from eight to five in the event a statutory change results in the State Library no longer requiring certain electronically available materials be provided in a hard copy format.

The committee also recommends amendments to Joint Rule 602 to reduce the number of hard copies of rule books that must be printed from 1,000 to 225 books to align with current practices and prevent an excessive number of rule books from remaining undistributed at the end of the legislative session.

### **Committee Hearing Schedule and Daily Calendar Subscriptions**

During the 2021 legislative session, no entities subscribed to daily calendars or weekly committee hearing schedules; however, copies were preprinted and made available in the bill and journal room for pick-up. The cost to print 250 daily House calendars, 200 daily Senate calendars, 300 weekly House committee hearing schedules, and 300 weekly Senate committee hearing schedules was \$23,615 for the 2021 legislative session.

The committee approved a reduction in the number of copies printed for the 2023 legislative session to 125 daily House calendars, 100 daily Senate calendars, 150 weekly House committee hearing schedules, and 150 weekly Senate committee hearing schedules.

### **Printing Services**

The committee reviewed the options available to the Legislative Assembly to either enter an agreement with Central Duplicating Services to print materials during the 2023 legislative session or request bids for printing services from outside vendors. The committee was informed the 67<sup>th</sup> Legislative Assembly used the services provided by Central Duplicating Services during the 2021 regular and special legislative sessions because no printing bids were received from outside vendors. Central Duplicating Services was flexible and accommodating to the Legislative Assembly's printing needs. The committee approved the use of Central Duplicating Services as the printing services provider for the biennium.

### **Bill and Journal Room Photocopy Policy**

Before the 2021 legislative session, the bill and journal room was operated by a private contractor. During the 2021 legislative session, the bill and journal room was operated by Legislative Assembly employees who provided secretarial, telephone message, and bill and journal room services. Bill and journal room staff did not charge a fee for providing a photocopy of a legislative document available for distribution to the public (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. For other documents or requesters, a photocopy fee of 25 cents per page was charged and transmitted to the Legislative Council office. The income generated from photocopy fees during the 2021 legislative session was \$48.

The committee approved continuation of the bill and journal room photocopy fee policy and the practice of staffing the bill and journal room with Legislative Assembly employees.

## **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 68<sup>th</sup> Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

## **SESSION ARRANGEMENTS**

### **Organizational Session**

The committee approved a tentative agenda for the 2022 organizational session. The 2022 organizational session will convene at 1:00 p.m. on Monday, December 5, 2022. The 2022 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 5. 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 2022 tentative agenda, in addition to a presentation by a representative of the National Conference of State Legislatures on workplace harassment and legislative ethics and a supplemental training session for contact persons on receiving and processing workplace harassment complaints. The agenda includes a computer distribution and training session for new legislators at 3:15 p.m. on Monday and additional computer distribution and training sessions on Tuesday and Wednesday. The committee also approved the addition of an informational session on human resource applications and benefits for new legislators and a session for committee chairmen to review newly created committee room desk manuals.

The committee received information regarding the need to create a legislative rule adding a measure submission deadline for the second Friday following the organizational session. Pursuant to Section 54-03-28, a measure providing for a health insurance mandate may not be referred to a committee of the Legislative Assembly unless a cost-benefit analysis is conducted and appended to that measure. On September 12, 2022, the Legislative Management adopted a deadline to submit to the Legislative Council proposed legislative measures that provide for a health insurance mandate to allow adequate time for a cost-benefit analysis to be performed. The deadline adopted was the close of business on the second Friday following the organizational session, which is Friday, December 16, 2022. The committee recommends the creation of Joint Rule 211, relating to the submission deadline for bills providing health insurance mandates, and the amendment of House Rule 402 to remove conflicting language.

### **Legislator Supplies**

#### **Electronic Letterhead**

Before 2013, every legislator had been given the option of receiving 250 sheets of regular (8.5 by 11 inches) or Monarch (7.5 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 to continue providing individualized stationery and envelopes because 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.

#### **Computer Bags**

The committee discussed the purchase of new computer bags and determined it was not necessary to purchase replacement bags for current legislators. The committee approved the purchase of new computer bags of comparable quality for newly elected legislators, to be distributed during the organizational session when new legislators receive their laptops and tablets.

## **Desk Phones**

The committee considered whether legislator desk phones should be retained in the legislative chambers. The cost to receive service for desk phones for the 6-month period the Legislative Assembly uses the phones is approximately \$20,000 per biennium. The committee approved the continued use of desk phones and recognized the convenience of having access to desk phones during floor sessions.

## **Legislative Session Employees**

### **Positions**

The committee reviewed the number of legislative employee positions during the 2021 legislative session and historical changes in 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 2019-21 interim, the committee recommended 37 Senate employees, 36 of which were hired for the 2021 legislative session, and 46 House employees, 43 of which were hired for the 2021 legislative session. The committee tasked each Employment Committee Chairman with reviewing employment positions and providing recommendations for modifications to the types or number of positions.

The changes recommended by the Employment Committee Chairmen included merging the bill clerk and recording clerk positions into a combined bill and recording clerk position; reclassifying existing committee clerk positions and reallocating eliminated positions to staff each committee with a procedural clerk and a technological clerk, with the exception of the Senate Appropriations Committee, which will be staffed by two procedural clerks and one technological clerk; eliminating the two assistant committee clerk positions in the House and the assistant committee clerk position in the Senate and reallocating two of the eliminated positions to a newly created quality assurance clerk position; eliminating two assistant sergeant-at-arms positions in the House; and eliminating the parking lot attendant and information kiosk attendant positions in the House and Senate.

The changes recommended were based on a robust review of the function and operation of employee positions during the 2021 legislative session to eliminate staff downtime, streamline functions based on the expanded role of technology, and ensure complete and accurate work product for legislative histories. The committee acknowledged the parking lot attendant positions historically have been difficult to fill and retain and the assistant sergeant-at-arms positions could absorb some of the parking lot attendant duties. Pages also have a considerable amount of downtime during which they can staff the bill and journal room and information kiosk on a rotating basis. Committee clerks will benefit from the clearly defined procedural and technological designations and the addition of a quality assurance position to review final work product. The committee reviewed an organizational chart for the House and Senate outlining the proposed positions and accepted the legislative session employee position plan that proposed 35 Senate employees and 44 House employees.

### **Compensation**

The committee reviewed legislative session employee compensation levels during the 2021 legislative session. In 2021, employee compensation was increased generally across the board by 2 percent and 2.5 percent, which reflected the 2 percent and 2.5 percent average pay increase authorized for state employees in 2019 and 2020 by the 66<sup>th</sup> Legislative Assembly. The committee reviewed 2023 proposed salaries which represent an increase of 1.5 percent and 2 percent, each of which was authorized for state employees by the 67<sup>th</sup> Legislative Assembly. The committee also reviewed targeted increases above the rates authorized for state employees to reflect positions that were consolidated or positions that were delegated additional duties.

The committee recommends compensation increases consistent with state employee compensation increases of 1.5 percent for the 1<sup>st</sup> year of the 2021-23 biennium and 2 percent for the 2<sup>nd</sup> year of the biennium plus additional daily compensation in the amount of \$9 for the bill and recording clerk position, \$13 for the deputy sergeant-at-arms position, and \$11 for the assistant sergeant-at-arms and supply room coordinator positions to reflect additional duties.

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, and information kiosk 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.



The committee recommends amendments to House and Senate Rules 206 to reflect the recommended officer and employee positions in the House and Senate.

### **Orientation and Training**

The Legislative Council staff will provide orientation and training for legislative session employees. The training will be similar to that provided before the 2021 legislative session, with the exception of training on the newly created quality assurance position and modified training for positions that have been consolidated with other positions or assigned additional duties. Most employees needing specialized training will receive training in December. The committee approved the orientation and training schedule, subject to any required changes by the Legislative Council.

### **Legislative Services**

#### **Secretarial, Telephone Message, and Bill and Journal Room 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 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 were provided by Legislative Assembly staff through the 1999 legislative session, during which time the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages.

Bill and journal room services were provided by Legislative Assembly staff through the 1995 legislative session, during which time the Legislative Assembly employed 12 bill and journal room clerks. For the 1997 through 2019 legislative sessions, the Legislative Assembly 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 a single contractor. Beginning with the 2003 legislative session, a single third-party contractor assumed the role of providing secretarial, telephone message, and bill and journal room services. Beginning with the 2015 legislative session, secretarial and telephone message and bill and journal room services were collocated in the bill and journal room.

Beginning with the 2021 legislative session, the practice of contracting with a third-party for secretarial, telephone, and bill and journal room services was discontinued due to decreased demand for these services. The Legislative Assembly staff began fulfilling the remaining need for these services beginning with the 2021 legislative session and will continue to fulfill these needs during the 2023 legislative session.

#### **Photography Services**

The committee approved the invitation to bid for photography services to the 68<sup>th</sup> Legislative Assembly. The invitation to bid contained generally the same specifications as the contract for the 67<sup>th</sup> Legislative Assembly, with some slight modifications to digital requirements. The photographs of legislators are to be taken during the organizational session in 2022, 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 16, 2022, 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 18, 2023. The invitation to bid was sent to 333 photography firms in the state. Two photographers submitted bids, one of which did not comply with the bid requirement to provide sample photographs. The conforming bid was Deborah Kates Fine Photography, Mandan, in the amount of \$13,500 for photography services and \$65 for each additional oak frame. The winning bid for photography services for the previous two Legislative Assemblies was \$4,000.

The committee considered the establishment of in-house photography services as an alternative option in light of increasing costs and the low number of outside bids historically received for photography services. One-time costs associated with the establishment of in-house photography services included up to \$600 for a camera, an additional \$600 for a camera lens, \$300 for lighting, \$200 for backdrops, and \$60 for an adjustable stool. Costs relating to printing would vary each legislative session based on market conditions. Costs under current printing rates would amount to \$1,848, plus shipping, for a 42x34 collage of each chamber and 154 smaller 11x17 collages of each chamber. No additional software or staffing costs would be incurred for the Legislative Council staff to provide in-house photography services.

The committee approved the establishment of in-house photography services due to the decreasing response rate to requests for bids; increasing costs for professional photography services; the low, one-time costs to purchase in-house equipment; and the ease of having photography services onsite for purposes of retakes and real-time image selection.

## **Legislative Programs**

### **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 68<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 22 of the past 23 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 was approved for the 2021 legislative session; however, due to the COVID-19 pandemic, the tour guide program was suspended during the 2021 legislative session. The tour guide program is used extensively by high school groups. Other groups also may be placed on the tour schedule upon request. The Legislative Council administrative staff has developed revisions to the program to provide an enhanced tour experience. The committee approved the continuation of the tour guide program for the 2023 legislative session.

### **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 2023 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 2023 legislative session as provided through the doctor of the day program by the North Dakota Medical Association during previous legislative sessions.

### **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 2023 legislative session. The Legislative Council staff will notify all legislators they have until December 31, 2022, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective houses during the 2023 legislative session.

## **Legislative Addresses**

### **State of the State Address**

During the 2021 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 2023 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 68<sup>th</sup> Legislative Assembly at 10:00 a.m. on the 1<sup>st</sup> legislative day.

**Legislative Reports****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 12, 2023, 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 12, 2023.

**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 11, 2023.

**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.

# NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned one study during the 2021-22 interim. Senate Bill No. 2036 (2021) directed a continuation of the 2019-20 interim study of access to public and private lands for hunting, trapping, fishing, and related issues authorized by Section 6 of House Bill No. 1021 (2019). The study required the evaluation of the state's electronic land access database and online application developed during the 2019-20 interim and expansion of the database and application to all counties in the state. The database and application were developed under the direction of the 2019-20 interim Natural Resources Committee and were available for use in Richland, Ramsay, and Slope Counties as a pilot project. The database and application allowed landowners to post their land electronically and allowed hunters and others to identify which land is posted electronically.

The committee was comprised of nine voting members and five nonvoting members. 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 Chief Information Officer's designee), and a representative of the North Dakota State's Attorneys' Association.

The members of the committee were Senators Robert Erbele (Chairman), Dale Patten, and Merrill Piepkorn; Representatives Gretchen Dobervich and Bill Tveit; citizen members Mr. David DeWald, Mr. Brian Schanilec, Mr. Joe Schettler, and Mr. John Weinand; and nonvoting members Mr. Doug Goehring, Agriculture Commissioner; Mr. Jason Horning, Next General 9-1-1 Program Manager, North Dakota Association of Counties; Mr. Shawn Riley, Chief Data Officer, Information Technology Department; Mr. Jeb Williams, Director, Game and Fish Department; and Mr. Ryan Younggren, Assistant State's Attorney, Cass County.

## BACKGROUND

### North Dakota Law Regarding Land Access for Hunters

North Dakota Century Code Chapter 20.1-01 governs access to land by hunters. 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. Under Section 20.1-01-18, individuals are prohibited from hunting or pursuing game on legally posted land unless they first obtain permission from the person legally entitled to grant permission. However, under Section 20.1-01-19, an individual may enter legally posted land to recover game shot or killed on land where the individual had a legal right to hunt.

To post land under Section 20.1-01-17, an owner of the land, or an individual authorized by the owner, must place signs along the public highway or land giving notice that hunting is not permitted on the land. The signs must be readable from the outside of the land and be at least 880 yards apart. If the land is entirely enclosed by a fence, the owner must place signs at each gate to post the land. Senate Bill No. 2144 (2021) established an alternative method for posting land. The bill amended Section 20.1-01-17 to allow an owner to post the land by designating the land as posted or closed to hunting in an online database or other electronic application maintained or authorized by the state and available to the public which identifies whether land is available to hunters. Even if an owner's posting does not comply with the requirements of Section 20.1-01-17 but notice against hunting or trespassing "is clear from the circumstances," the land is deemed posted under Section 20.1-01-17 and an intruder is guilty of hunting on posted land.

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.

### Criminal Trespass on Fenced Property

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. 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 by a fence or otherwise enclosed as manifestly to exclude intruders, unless the individual is a licensed hunter or angler who

is lawfully hunting or fishing." In 2019, the Supreme Court held culpability for trespass on fenced property depends, in part, on the fence at issue. To address this issue, in 2021, the Legislative Assembly defined the word "fence" in the statute as "a permanent structure on nonurban, private property which is maintained and capable of containing livestock."

### **Criminal Trespass After Receiving Actual Communications**

Under Section 12.1-22-03, if an individual in charge of the premises or another authorized individual tells an intruder not to enter the premises or to leave the premises, the intruder is on notice and must leave. If the intruder does not leave, the intruder is guilty of criminal trespass. To satisfy the elements of criminal trespass under this provision, a landowner must provide "actual communication" to the intruder either verbally or in writing. Even if a landowner or other authorized individual only "substantially complies" with this provision, if notice against trespass is clear from the circumstances, an intruder is guilty of criminal trespass. However, it is unclear what actions would constitute substantial compliance with the notice requirement.

### **Criminal Trespass on Posted Land Section**

Section 12.1-22-03 prohibits an individual from entering or remaining on land posted in a manner reasonably likely to come to the attention of intruders. The statute also provides the name of the person posting the premises must appear on each sign in legible characters. As with the requirement to provide actual communication, a landowner or other authorized individual only has to "substantially comply" with the posting requirements, provided notice against trespass is clear from the circumstances. The North Dakota Supreme Court has held "no trespassing" signs without the poster's name do not substantially comply with posting requirements. However, the court did not provide guidance regarding what would constitute substantial compliance.

House Bill No. 1293 (2017) created Section 12.1-22-03(4) to provide a noncriminal penalty for trespass on posted land. According to the legislative history on the bill, Section 12.1-22-03(4) was intended to reduce the burden on courts by allowing peace officers to cite some trespassers and fine them \$250 for a violation. Senate Bill No. 2144 (2021) expanded this provision to apply also to an individual who knows the individual is not licensed or privileged to be in "a place enclosed by a fence." As a result, an individual engaging in that activity is subject to a criminal penalty under Section 12.1-22-03(3) or a noncriminal fine under Section 12.1-22-03(4). Additionally, if the individual also is hunting, the individual is subject to a criminal penalty under Chapter 20.1-01.

## **LAND ACCESS DATABASE AND APPLICATION**

In addition to requiring the study of access to public and private lands for hunting, trapping, fishing, and related issues, Section 6 of House Bill No. 1021 (2019) required the Information Technology Department (ITD) and the Game and Fish Department to establish a trial electronic posting and hunter access information system pilot project in three counties in the state. The information system included a database and a mobile application developed under the direction of the 2019-20 interim Natural Resources Committee and made available for use in Richland, Ramsey, and Slope Counties, which volunteered to participate in the project. The database and application allow landowners to post land electronically and allow hunters and others to identify which land is posted electronically. The pilot project included housing the database on the Game and Fish Department website; obtaining land parcel information from counties selected for the pilot project; developing an interactive map to denote hunting unit boundaries; educating county officials, landowners, hunters, and game wardens regarding the pilot project; and requiring participating landowners to designate land as open or closed to hunters in the pilot project.

The land access website and application for the pilot project were developed, owned, and operated by ITD, with assistance from the Game and Fish Department. The participating counties provided the necessary land parcel data to ITD and are responsible for updating the data. The land parcels were preloaded in the database and application. Landowners participating in the pilot project were required to create a profile, search county tax land parcels in the database, complete an application form prepared by ITD to claim their land parcels, and designate their land as open or closed for hunting in the application. The Information Technology Department authenticated the ownership of land parcels in the application. Landowners also have the ability to provide contact information in the application if they wish to allow hunters the ability to contact them to request permission to hunt on their land, but landowners are not required to provide the contact information. The database allows landowners to designate land only as open or closed.

Landowners and hunters access the electronic posting application created by ITD through the Game and Fish Department's online licensing system. Hunters may download and use the mobile application on a personal mobile device to determine where they are located relative to a parcel of land that is of hunting interest, determine whether the parcel is open or closed for hunting, and print a map of the surrounding area. The pilot project received participation by 79 landowners in the three participating counties. The landowners designated approximately 38,000 acres as open or closed for hunting on 260 tracts of land through the pilot project application.

## TESTIMONY AND COMMITTEE CONSIDERATIONS

### Land Access Database Project - 2021

The committee received testimony from a representative of the Game and Fish Department regarding the status and performance of the land access database pilot project after the 1<sup>st</sup> year of statewide expansion. Testimony indicated the project relied on tax roll parcel information provided by counties through the sitewide land parcel project. Parcel information was aggregated and added to the state's centralized database. Testimony indicated the land access database and mobile application performed well. Over 2,000 landowners participated in posting nearly 4 million acres to the system. Ownership of parcels posted to the system was validated using North Dakota driver's licenses; however, an alternative validation method may be needed for nonresidents who own land in the state and would like to use the posting system. The Game and Fish Department has been in contact with the Department of Transportation and expects an alternative method for national validation will be developed soon. The committee discussed establishing administrative rules to clarify and provide guidelines for the electronic posting system.

The committee discussed general concerns of hunter awareness regarding the statewide project. The Game and Fish Department used targeted messaging through email, direct text messaging, and news alerts to notify sportsmen of the pilot project. Additionally, the department required confirmation of the new laws on their website when applying for and purchasing hunting licenses within the state.

The committee received positive feedback from landowners regarding the lower costs and ease of posting electronically. Some landowners elected to post their land entirely online while others have combined electronic posting with physical posting in high-traffic areas. The electronic database has eased landowner concerns relating to destroyed, missing, or weathered posting signs. Additionally, the project has provided landowners and sportsmen requesting public access for hunting an easier way to communicate.

The committee received testimony from representatives of the North Dakota Stockmen's Association and North Dakota Grain Growers Association regarding the performance of the land access database pilot project. Landowners are impressed with the operation and function of the system and participation has increased since the 1<sup>st</sup> year.

The committee received testimony from a representative from North Dakota Wildlife Federation, who reported overall positive feedback from both landowners and sportsmen. Several landowners and sportsmen have indicated some frustration, however, with the time required to download the mobile application.

The committee discussed amending the requirements for landowners to annually renew their land. A representative from the Game and Fish Department identified possible conflicts and concerns that might arise from not updating the system with proper ownership and land descriptions.

The committee discussed implementing several enhancements to the land access database program. The committee discussed utilizing a drop-down box for landowners to list their land as "no hunting," "hunting with permission," or "hunting allowed." The committee agreed these designations could lead to confusion because landowners post their land differently depending on the species and hunting season.

The committee received testimony from a representative of the North Dakota Association of Counties regarding the participation of the counties relating to Geographic Information Systems data through the statewide parcel program. The project received a one hundred percent participation rate in support of the project. The representative did not receive any negative feedback from the counties regarding the program. From the counties' perspective, the program is passive because the information requested already has been produced.

The committee received information from a representative of the Board of University and School Lands relating to state trust lands and their inclusion in the land access database project. The representative noted trust lands closed to public access are listed on the Department of Trust Land's website and are not listed with the Game and Fish Department. Ranchers who elect to post these lands are unable to meet the current deadlines for the land access database program. The committee discussed the possibility of combining this information for sportsmen. The committee received testimony from a representative of the Game and Fish Department noting the two departments have been in contact regarding incorporating this information. Testimony indicated one of the primary concerns is timing because the information requested from landowners may not be available until just before or shortly after the fall hunting season. Additional considerations include the duration for which trust lands are posted. Most trust lands are not posted for the entire year which may cause conflicts with the printed material produced by the Game and Fish Department. Typically, trust lands only are posted during the hunting season if cattle are present on the property. Mobile applications also are limited in the amount of information that can be utilized at one time.

The committee discussed limiting the authority to post land within the land access database to only landowners or lessees. Current law provides any landowner or individual authorized by the landowner may post property either physically or electronically. Current law also provides a penalty for individuals who improperly post land. The committee agreed the issue is properly addressed in the Century Code.

### **Land Access Database Project - 2022 Statewide Update**

The committee received an update from a representative of the Game and Fish Department regarding the status and performance of the land access database project, including the functions of the database and related issues after opening the program to the entire state.

The electronic posting enrollment period opened on February 1, 2022, and closed on July 1, 2022. Data was collected from the counties through the statewide land parcel project. The department saw participation in the program increase from 2,000 to 4,500 individual landowners with the total acres of posted land doubling from 3.7 million to 7.3 million acres. Only 15 percent of landowners from the previous year did not re-enroll in the program. The Game and Fish Department provided notice to landowners of the renewal process and implemented a one-click renewal process for convenient enrollment. The department received positive feedback from landowners, hunters, and users of the program.

The department faced several challenges regarding customer service requests for assistance on outdated data, data quality concerns regarding the posting of incorrect lands, and stewardship concerns regarding data review. The committee discussed the current challenges faced by the department and concluded these challenges were anticipated with the expansion of the program. The committee discussed a legislative appropriation to aid the department with the continued expansion of the program, if necessary. A representative from the Game and Fish Department indicated the department has attempted to simplify the system to address issues regarding department workload. The department indicated additional department staff were educated in the program to assist with customer service requests.

The committee received testimony regarding possible areas for enhancement, including hosting solutions, communication tools, and nonresident landowner validation. Data and information relating to the program is hosted by ITD. The committee was informed cloud storage could be a valid alternative if issues arise from hosting additional information.

The committee was informed the department has considered adding an application communication system that could be used by the department to simplify customer service requests. Additionally, the committee received testimony relating to the department's inability to validate nonresident driver's licenses. The committee received information regarding paid services that could be used by the department to validate nonresident landowners.

The committee discussed the implementation of administrative rules regarding the governing of the program. The committee agreed this area should be explored by the Game and Fish Department. The committee thought it prudent to not implement anything that would cause confusion with the program or conflict with enforcing current posting laws for hunters.

The committee expressed approval with respect to the progress, results, and positive feedback regarding the project. The committee agreed the application is early in development and will continue to be updated and modified to better process landowner applications and hunter usage in the field. The committee was pleased with the public support the project received from both hunters and landowners.

### **CONCLUSION**

The committee makes no recommendation regarding its study of the expansion of the land access database and its application to all counties in the state.

# REDISTRICTING COMMITTEE

The Redistricting Committee was assigned the responsibility to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. [House Bill No. 1397 \(2021\)](#) required the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. The bill provided:

1. The committee must consist of an equal number of members from the Senate and the House of Representatives appointed by the Chairman of the Legislative Management.
2. The committee shall ensure any legislative redistricting plan submitted to the Legislative Assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the Legislative Assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the Legislative Management by November 30, 2021.
4. A draft of the legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly is an exempt record as defined in North Dakota Century Code Section 44-04-17.1 until presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly, at which time the presented or distributed draft is an open record. If possible, the presented or distributed draft must be made accessible to the public on the legislative branch website such as through the use of hyperlinks in the online meeting agenda. Any version of a redistricting plan other than the version presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly is an exempt record.
5. The Chairman of the Legislative Management shall request the Governor to call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2022 primary election and to address any other issue that may be necessary.

Committee members were Representatives Bill Devlin (Chairman), Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson, Mike Nathe, and Austen Schauer and Senators Brad Bekkedahl, Randy A. Burckhard, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, and Ronald Sorvaag.

The committee submitted this report to the Legislative Management on November 1, 2021. The Legislative Management accepted this report for submission to the Legislative Assembly.

## BACKGROUND

### Redistricting History in North Dakota

#### 1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided:

1. The Legislative Assembly must apportion itself after each federal decennial census; and
2. If the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment.

Because the 1961 Legislative Assembly did not apportion itself following the 1960 Census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the Majority and Minority Leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined the plan was unconstitutional and the 1931 plan continued to be law.

#### 1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of Article II of the Constitution of North Dakota were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan also was held invalid. Thus, there was no constitutionally valid legislative



redistricting law in existence at that time. The court concluded adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.

## 1965

A conference committee during the 1965 legislative session consisting of the Majority and Minority Leaders of each house and the Chairmen of the State and Federal Government Committees produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, four districts slightly over 5 percent, and two districts exceeding 9 percent.

## 1971

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued the multimembership violated Section 29 of Article II of the Constitution of North Dakota, which provided each senatorial district "shall be represented by one senator and no more." The court held Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

In 1971 the Legislative Assembly failed to redistrict itself after the 1970 Census and an action was brought in federal district court which requested the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional, and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

## 1973-75

In 1973 the Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council Chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F.Supp. 371 (1974) made the "Dobson" plan permanent. However, on appeal, the United States Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F.Supp. 649 (1975), the court held the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

## 1981

In 1981 the Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council Chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee.

The committee considered a total of 12 legislative redistricting bills. The reconvened session adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities, and each elected two senators and four representatives at large.

#### **1991-95**

In 1991 the Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative redistricting study. The committee consisted of eight senators and eight representatives. The Legislative Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 (1991) split the two Air Force bases so neither base would be included with another district to form a multisenate district. Senate Bill No. 2598 (1991) placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

In a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. The bill was heard by the Joint Legislative Redistricting Committee. The bill also was amended to provide any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of 4 years, to provide the senator from a new district created in Fargo had to be elected in 1992 for a term of 2 years, and to include an effective date of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

The Legislative Council again contracted with Mr. Hickok to provide services for the subdistrict study. After conducting the subdistrict study, the interim committee recommended House Bill No. 1050 (1993) to establish House subdistricts

within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. In 1993 the Legislative Assembly did not adopt the subdistricting plan.

In 1995 the Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

## **2001**

In 2001, the Legislative Assembly budgeted \$200,000 for a special session for redistricting and adopted House Concurrent Resolution No. 3003, which provided for a study and the development of a legislative redistricting plan or plans for use in the 2002 primary election. The Legislative Council appointed an interim Legislative Redistricting Committee consisting of 15 members to conduct the study. The Legislative Redistricting Committee began its work on July 9, 2001, and submitted its final report to the Legislative Council on November 6, 2001.

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses. In addition, each caucus was provided a color printer.

The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended Senate Bill No. 2456 (2001), which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

In a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district plan included in Senate Bill No. 2456 (2001) with amendments, most notably amendments to the provisions relating to the staggering of terms. The bill was heard by the Joint Legislative Redistricting Committee. The term-staggering provisions provided a senator and a representative from an odd-numbered district must be elected in 2002 for a term of 4 years and a senator and a representative from an even-numbered district must be elected in 2004 for a term of 4 years. The bill further included provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. In *Kelsh v. Jaeger*, 641 N.W.2d 100 (2002), the North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

## **2011**

In 2011, the Legislative Assembly passed House Bill No. 1267 (2011), which directed the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The Legislative Redistricting Committee consisted of 16 members and held its first meeting on June 16, 2011. The committee concluded its work on October 12, 2011, and submitted its final report to the Legislative Management on November 3, 2011.

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased an additional computer and redistricting software license for the shared use of the members of those groups. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts because the committee members generally agreed potential redistricting plans should be based upon the cores of existing districts.

The committee considered increasing the number of districts and received information regarding the estimated cost of a district based on a 77-day legislative session, which amounted to approximately \$1,190,170 for the decade. The committee elected to maintain a 47-district plan and determined the plan should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible and preserve the boundaries of the Indian reservations.
3. Provide for a population variance of 9 percent or less.

The committee recommended a bill to repeal the existing redistricting plan, establish 47 legislative districts, provide for the staggering of terms of members of the Legislative Assembly, and authorize the Secretary of State to modify primary election deadlines and procedures if any delays arose in implementing the redistricting plan. Under the 47-district plan recommended by the committee, the ideal district size was 14,310. The population of the largest district was 14,897, which was 4.10 percent over the ideal district size, and the population of the smallest district was 13,697, which was 4.28 percent below the ideal district size, providing for an overall range of 8.38 percent. The plan included 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district.

The committee also recommended a bill draft to the Legislative Management which would have required each legislative district contain at least six precincts. The Legislative Management rejected the portion of the committee's report relating to this bill draft.

In a special session held November 7-11, 2011, the Legislative Assembly adopted the committee's 47-district plan included in House Bill No. 1473 (2011) with minor amendments to legislative district boundaries and a change in the effective date from December 1 to November 25, 2011. The bill was heard by the Joint Legislative Redistricting Committee and approved by the 62<sup>nd</sup> Legislative Assembly by a vote of 60 to 32 in the House and 33 to 14 in the Senate.

## **NORTH DAKOTA REDISTRICTING LAW**

### **Constitutional Provisions**

Section 1 of Article IV of the Constitution of North Dakota provides the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." The section provides districts ascertained after the 1990 federal decennial census must "continue until the adjournment of the first regular session after each federal decennial census, or until changed by law."

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." This section requires the apportionment of one senator and at least two representatives to each senatorial district. This section also provides that two senatorial districts may be combined when a single-member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

### **Statutory Provisions**

In addition to the constitutional requirements, Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. The plan must ensure legislative districts be as nearly equal in population as is practicable and population deviation from district to district be kept at a minimum. Additionally, the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years. House Bill No. 1473 (2011) repealed Sections 54-03-01.8 and 54-03-01.10 and created a new section regarding the staggering of terms. Section 54-03-01.13 provides senators and representatives from even-numbered districts must be elected in 2012 for 4-year terms; senators and representatives from odd-numbered districts must be elected in 2014 for 4-year terms, except the

senator and two representatives from District 7 must be elected in 2012 for a term of 2 years; the term of office of a member of the Legislative Assembly elected in an odd-numbered district in 2010 for a term of 4 years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012, subject to certain change in residency exceptions; the term of office of a member of the Legislative Assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than 25 percent of the ideal district population terminates on December 1, 2012; and a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a 2-year term of office.

Section 16.1-01-02.2 pertains to procedures regarding special elections. As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, the Legislative Assembly amended Section 16.1-01-02.2 during the November 1991 special session. The amendment provided "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan." This 30- to 50-day timetable was later amended to 90 days in 2007.

Section 16.1-03-17 provides if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the political parties in the newly established precincts and districts shall reorganize as closely as possible in conformance with Chapter 16.1-03 to assure compliance with primary election filing deadlines.

## **FEDERAL REDISTRICTING LAW**

Before 1962, the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

### **Population Equality**

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held the equal protection clause of the 14<sup>th</sup> Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population--the total state population divided by the number of districts--of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions--*Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "[v]ery likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice William J. Brennan's dissents in *Gaffney* and *White* argued the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted the majority opinions provided states would be required to justify overall ranges of 10 percent or more. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the reasons given, which included an absence of a particular racial or political group whose

power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded the constitutional policy of ensuring each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14<sup>th</sup> Amendment which requires justification by the state. However, the Court further concluded a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city--a regional entity. However, the Court held the city failed to sustain its burden of justifying the large deviation.

In a federal district court decision, *Quilter v. Voinovich*, 857 F.Supp. 579 (N.D. Ohio 1994), the court ruled a legislative district plan with an overall range of 13.81 percent for House districts and 10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated in the previous district court decision, the district court mistakenly held total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.

Although the federal courts generally have maintained a 10 percent standard, a legislative redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. In *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), a federal district court in Georgia found two legislative redistricting plans adopted by the Georgia General Assembly which had an overall range of 9.98 percent violated the "one person one vote" principle. Although legislators and redistricting staff indicated they prepared the plans under the belief that an overall range of 10 percent would be permissible without demonstrating a legitimate state interest, the district court found the objective of the plan, protection of certain geographic areas and protection of incumbents from one party did not justify the deviations from population inequality, particularly in light of the fact that plans with smaller deviations had been considered. With respect to protection of incumbents, the court indicated while it may be a legitimate state interest, in this case the protection was not accomplished in a consistent and neutral manner. Although protection of political subdivision boundaries is viewed as a traditional redistricting principle, the court held regional protectionism was not a legitimate justification for the deviations in the plans. The United States Supreme Court upheld the district court opinion in *Larios*.

In *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), the Texas Legislature redrew Senate districts based on total population, rather than registered voter population. Opponents of the redistricting plan argued the use of total population, rather than voter population, gave voters in districts with a large immigrant population a disproportionately weighted vote compared to voters in districts with a small immigrant population. The Supreme Court held states may, but are not required to, use total population when drawing districts to comply with the one-person, one-vote principles under the equal protection clause.

In *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016), the Supreme Court upheld a redistricting plan with an overall deviation of 8.8 percent. The Supreme Court held even though partisanship may have played a role in developing the plan "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act." The plaintiffs failed to meet the burden of showing it was more probable than not that the deviation predominately resulted from the use of illegitimate redistricting factors.

Case law has established if a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

### **Partisan Gerrymandering**

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated political gerrymandering is justiciable. However, the Court determined the challengers of the legislative redistricting plan failed to prove the plan denied them fair representation. The Court stated a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 2004 a sharply divided Supreme Court addressed a challenge to a congressional redistricting plan adopted in Pennsylvania. In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), four of the justices concluded partisan gerrymandering cases are nonjusticiable due to a lack of judicially discernible and manageable standards for addressing the claims. One other justice concurred in the opinion, but on other grounds, and the remaining four justices issued three dissenting opinions. Despite the challenge being dismissed, a majority of the court--the four dissenting justices and the one justice concurring in the decision to dismiss the claim--continued to maintain partisan gerrymandering cases may be adjudicated by the courts.

The Supreme Court again issued a divided opinion 2 years later in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). In that decision, six justices wrote opinions and five justices agreed partisan gerrymandering cases are justiciable. However, the court did not agree on a standard for addressing claims and the partisan gerrymandering claim was dismissed.

The question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court in 2019. In the consolidated case of *Rucho v. Common Cause*, 139 S. Ct. 2428 (2019), the congressional redistricting maps for North Carolina and Maryland were challenged as unconstitutional partisan gerrymanders. In *Rucho*, the Supreme Court held "partisan gerrymandering claims present political questions beyond the reach of the federal courts." The Court further stated, "the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

Instances in which state courts have addressed partisan gerrymandering include *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (Fla. 2015). In this case, the challengers of the plan alleged the congressional redistricting plan was drawn to favor incumbent lawmakers and the Republican Party in violation of the Fair Districts Amendment to the Constitution of Florida, which prohibits political consideration in redistricting. The Florida Supreme Court upheld the trial court's findings that the map was tainted by the unconstitutional intent alleged and the Legislature was required to redraw the boundaries of several districts.

Partisan gerrymandering also was addressed at the state level in *League of Women Voters of Pennsylvania v. Commonwealth*, 644 Pa. 287 (2018). In this case, the challengers of the plan alleged the state's 2011 congressional plan violated the Free and Equal Elections Clause of the Constitution of the Commonwealth of Pennsylvania by providing one party an unfair advantage. The Pennsylvania Supreme Court found the plan lacked compactness and split local jurisdiction boundaries to an inordinate degree. The court held application of traditional redistricting principles must be the overriding consideration when preparing a redistricting map to avoid a violation of the Free and Equal Elections Clause. The Supreme Court held the map unconstitutional and substituted the 2011 map with a remedial map drawn by a special master.

Thus, though now precluded at the federal level, partisan gerrymandering cases may be justiciable in state court.

## Multimember Districts and Racial or Language Minorities

According to data compiled by the National Conference of State Legislatures, North Dakota is 1 of 10 states that have multimember districts. Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Many decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated a minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Until redistricting in the 1990s, racial gerrymandering--the deliberate distortion of boundaries for racial purposes--generally had been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district. As a result, a number of redistricting plans adopted in the 1990s were challenged by white voters on equal protection grounds and the United States Supreme Court subsequently has held several redistricting plans to be unconstitutional as a result of racial gerrymandering.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear race-conscious redistricting may not be impermissible in all cases. However, the Court held the plan to a test of strict scrutiny and required the racial gerrymander be narrowly tailored to serve a compelling state interest. The Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional. However, compliance with the Voting Rights Act and other circumstances may justify or necessitate the use of race in that manner.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, the Court indicated unless race was the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful. In addition, the Court articulated seven policies that have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

Section 5 of the Voting Rights Act requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. Section 5 of the Voting Rights Act applied to states and political subdivisions that demonstrated a history of voter discrimination. However, in 2013, the formula used to determine which jurisdictions were subject to the preclearance requirements in



Section 5 was held unconstitutional by the Supreme Court in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Thus, states and jurisdictions formerly subject to review are no longer required to submit their redistricting plans for preclearance under Section 5.

## **TESTIMONY AND COMMITTEE CONSIDERATIONS**

### **Redistricting Computers and Software**

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased two additional computer and redistricting software licenses for the shared use of the members of those groups. The members of the committee were encouraged to use the redistricting software to develop redistricting plans to present for the review of the committee at each meeting. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts.

### **Population Changes**

The committee received the results of the 2020 Census on August 12, 2021. The data indicated the population in North Dakota increased by 15.8 percent over the past decade, which was the fourth largest percentage increase in state populations nationwide. The committee reviewed the changes in population between the 2010 to 2020 Census for legislative districts, counties, and cities. The majority of the population growth occurred in urban areas and in oil-producing counties, and the county with the largest percentage increase in population nationwide was McKenzie County, which increased in population by 131 percent over the past decade. Despite large gains in certain areas of the state, 30 of the state's 53 counties lost population. Population gains and losses in legislative districts varied dramatically, with some legislative districts increasing in population by more than 100 percent and others decreasing in population by more than 10 percent.

The committee discussed concerns regarding the accuracy of census data in smaller census units due to the application of differential privacy. The committee was mindful of the compressed time frames for completing redistricting as a result of delays in receiving census data.

### **Urban and Rural Considerations**

The committee received testimony expressing concerns regarding the shift in urban and rural populations. Concerns included whether individuals living in primarily rural districts would be shifted to districts comprised of a majority of urban areas, leading to minimization of rural concerns, and whether primarily rural districts would be required to expand geographically due to population losses, leading to reduced direct access to legislators. Suggestions to address these concerns included creating subdistricts in rural districts or increasing the size of the Legislative Assembly as an attempt to preserve more existing district boundaries to lessen the impact of redistricting on rural areas of the state.

### **Size of the Legislative Assembly**

Committee members debated whether to consider redistricting plans that would increase the size of the Legislative Assembly. The committee received information provided to the 2011 Redistricting Committee regarding the cost of a legislative district, which in 2011 amounted to an estimated \$1.2 million in salaries and benefits for a 10-year period. The committee received information showing the ideal district size for a 47-district plan is 16,576, while the ideal district size for a 54-district plan, which is the maximum number of constitutionally permissible districts, is 14,428. Proponents of maintaining 47 legislative districts noted South Dakota has a larger population than North Dakota but only 35 legislative districts. The committee determined it was prudent to require proposals submitted to the committee conform with a 47-district plan, rather than allowing proposals for varying numbers of districts due to the abbreviated timeline the committee had to complete its work.

### **Population Deviation**

The committee received information regarding the overall population deviation in past redistricting plans. Because an overall range of 10 percent generally has been considered as an acceptable level of population deviation, committee members agreed any plan recommended by the committee should have an overall range of 10 percent or less. Plans submitted to the committee for consideration generally remained within plus or minus 5 percent of the ideal district size. The final plan considered by the committee had an overall deviation of 9.87 percent, with the largest district 4.88 percent over the ideal district population and the smallest district 4.99 percent below the ideal district population.

### **Preservation of Political Subdivision Boundaries**

The committee received testimony requesting the committee avoid splitting counties whenever possible. The final plan considered by the committee included 33 counties that were not split, 4 counties that were split only to preserve the boundaries of a reservation, 8 counties that were split only because the population of each county exceeded the ideal district size, and 8 counties that were split for other reasons. By comparison, the redistricting plan adopted by the

Legislative Assembly in 2011 had 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Reservation, 3 counties that were split only because the counties included cities that were too large for one district, and 14 counties that were split for other reasons.

### **Existing Districts and Communities of Interest**

Committee members were encouraged to keep traditional redistricting principles in mind when completing redistricting plans. Factors other than population and preserving political subdivision boundaries which were considered in proposed plans presented to the committee included preservation of the cores of existing districts, protection of incumbents, and preservation of communities of interest. Committee members also identified district boundaries using major streets and other easily identifiable geographic features when possible.

### **Native American Voters and the Creation of Subdistricts**

The committee solicited and received testimony from several individuals representing tribal interests, tribal nations, and Native American rights organizations, including the Executive Director of the Indian Affairs Commission and representatives of the Spirit Lake Nation, Standing Rock Sioux Tribe, Three Affiliated Tribes, Native American Rights Fund, and North Dakota Native Vote. The testimony:

- Noted the growth of Native American populations in North Dakota;
- Urged the creation of subdistricts for Native American voters to comply with the federal Voting Rights Act and prevent dilution of votes cast by Native Americans;
- Requested tribal members be considered communities of interest;
- Urged the committee to provide equitable, more direct, and more responsive representation for Native Americans;
- Urged the committee not to split reservations into multiple districts;
- Noted multiple Native American candidates have had unsuccessful campaigns for membership in the House;
- Asserted there has been a history of discrimination in North Dakota against Native Americans; and
- Asserted a history of racial bloc voting has prevented Native American voters from electing their candidates of choice.

The committee also received updates from committee members who serve on the Tribal and State Relations Committee, which met with representatives of the Turtle Mountain Band of Chippewa, Three Affiliated Tribes, and Spirit Lake Nation on their respective reservations regarding redistricting and other matters. The updates generally were consistent with the testimony presented to the Redistricting Committee. One member of the House testified in opposition to subdistricts.

The committee reviewed the 2020 Census data for tribal reservations, including the total population, total voting-age population, American Indian population, and American Indian voting-age population for each of the five reservations in North Dakota. ("American Indian" is the official United States Census Bureau designation for Native Americans.) Committee members noted the American Indian populations on the Fort Berthold Reservation and Turtle Mountain Reservation exceeded 4,145, the number required to constitute a majority of a House subdistrict with the ideal population size of 8,288. According to the Census Bureau, 5,537 American Indians live on the Fort Berthold Reservation, and 4,767 American Indians live on the Turtle Mountain Reservation. The numbers of American Indians on the Spirit Lake Reservation and the North Dakota portions of the Lake Traverse Reservation and Standing Rock Reservation are 3,134, 56, and 3,332, respectively.

The committee received information from the Legislative Council staff and testimony from others on constitutional and statutory provisions regarding the use of race in redistricting. In particular, the committee received detailed testimony and information regarding the 14<sup>th</sup> Amendment, the federal Voting Rights Act, and caselaw applying them to multi-member and single-member districts. The testimony and information included in-depth discussions of the *Gingles* preconditions and the circumstances under which majority-minority districts or subdistricts are required under federal law. The committee also received information regarding *Grinnell v. Sinner*, a case in which Native Americans sued Governor George Sinner and other officials alleging the Voting Rights Act required North Dakota's 1991 redistricting plan to include a subdistrict for Native Americans in District 4. The plaintiffs lost the case because they were unable to meet the first *Gingles* precondition based on the Native American population in District 4 in the 1990 Census. According to the Census Bureau, 2,999 Native Americans lived on the Fort Berthold Reservation in 1990. The ideal district population for North Dakota based on the 1990 Census was 13,037, and the ideal subdistrict population was 6,518. The committee also received information regarding the creation of two Native American-majority subdistricts in South Dakota and the litigation concerning the subdistricts.

The committee engaged in several discussions regarding subdistricts. Some committee members expressed discomfort with drawing subdistrict boundaries based on race, a preference for court-directed subdistricts over legislatively initiated subdistricts, and concerns about having most citizens vote for two members of the House of Representatives while citizens residing in subdistricts vote for only one representative. Other committee members noted the creation of subdistricts might prevent a possible dilution of Native Americans' votes, provide communities of interest an opportunity to select their candidates of choice, and potentially stave off a court challenge to the redistricting map for which the committee had worked in an honest and transparent manner. Some committee members expressed a preference for legislatively drawn district boundaries over court-drawn boundaries that may result from litigation.

### **Staggering of Terms**

The committee reviewed information regarding the procedures for staggering the terms of senators and representatives. The committee reviewed a bill draft that would maintain 4-year terms for members of the Legislative Assembly and:

- Require elections for senators and representatives in odd-numbered districts and subdistricts in 2022; and
- Require elections for senators and representatives in even-numbered districts in 2024, except in the following situations in which elections in 2022 would be required:

Three or more representatives elected from even-numbered districts in 2020 are located in an even-numbered district;

Two or more senators elected from even-numbered districts in 2020 are located in an even-numbered district;

A member of the Legislative Assembly elected from an even-numbered district is located in an odd-numbered district, and the member does not move back into the even-numbered district and provide the requisite certification of the change of residence by February 1, 2022;

The even-numbered district has been divided into subdistricts; and

The 2020 population of the geographic area added to the even-numbered district since 2010 is more than 25 percent of the ideal district population.

The bill draft also would provide a member of the Legislative Assembly is deemed to "live in" the district from which the member was elected until December 1, 2022, for purposes of Section 5 of Article IV of the Constitution of North Dakota. This provision would allow the member to continue serving the district from which the member was elected even if the member is located in a different district in the 2021 redistricting map.

### **RECOMMENDATIONS**

The committee recommends [House Bill No. 1504](#) to establish 47 legislative districts, including subdistricts in Districts 4 and 9, and to include the provisions of the bill draft relating to the staggering of terms of members of the Legislative Assembly. The bill draft also repeals the current legislative redistricting plan, provides the Secretary of State authority to modify 2022 primary election deadlines and procedures as necessary to conduct the 2022 primary election, provides legislative intent regarding legislative district boundaries and the terms of incumbent legislators, and becomes effective upon its filing with the Secretary of State.

Under the plan recommended by the committee, the largest district has a population of 17,385 and the smallest district has a population of 15,749. Thus, the largest district is 4.88 percent over the ideal district size and the smallest district is 4.99 percent below the ideal district size, providing for an overall range of 9.87 percent. The plan includes 33 counties that were not split, 4 counties that were split only to preserve the boundaries of a reservation, 8 counties that were split because the population of each county exceeded the ideal district size, and 8 counties that were split for other reasons. Population data and maps of the proposed districts are available on the legislative branch website.

# RETIREMENT COMMITTEE

The Retirement Committee was tasked with developing a plan for new hires under the Public Employees Retirement System (PERS) main system to participate in the defined contribution (DC) plan and to close the defined benefit (DB) plan to new entries effective January 1, 2024, pursuant to House Bill No. 1209 (2021). The committee, upon approval of the Chairman of the Legislative Management, had the authority to use the services of a third-party contractor to assist in the study.

Additionally, the committee received authorization from the Legislative Management to develop a plan for new hires under the PERS main system to participate in a DC, cash benefit, or hybrid plan and to close the DB plan to hires effective on a date certain.

Committee members were Representatives Mike Lefor (Chairman), Rick Becker, Joshua A. Boschee, Jason Dockter, Scott Louser, Austen Schauer, Vicky Steiner, and Greg Stemen and Senators Howard C. Anderson, Jr., Karen K. Krebsbach, Doug Larsen, Tim Mathern, Kristin Roers, and Shawn Vedaa.

## BACKGROUND

### Original Main System Defined Contribution Plan

Senate Bill No. 154 (1965), created a PERS DC plan, effective July 1, 1966, Senate Bill No. 2068 (1977) converted the main system DC plan to a DB plan.

### Main System Defined Benefit Plan

#### Contribution Rates

The PERS main system DB plan is funded from employer contributions, employee contributions, and investment earnings. Contributions are calculated based on a percentage of gross pay. 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 a retiree health benefit credit. In January 2012, January 2013, and January 2014, the employer and employee contributions each increased by 1 percent annually. Senate Bill No. 2046 (2019) reallocated the 1.14 percent employer contribution for the retiree health insurance credit to the main system DB plan for employees hired after December 31, 2019. The following reflects the history of employer and employee contribution rates for the main system DB plan:

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 retiree health insurance credit to the main system DB 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.

#### Membership

The following is a summary of membership of the PERS main system DB plan as of January 1 of each year:

Calendar Year	Active State Members	Active Political Subdivisions Members	Retirees and Beneficiaries	Deferred Members	Total
2013	10,014	10,264	7,214	7,634	35,126
2014	10,437	11,511	7,907	8,304	38,159
2015	10,536	12,097	8,628	9,503	40,764
2016	10,783	12,750	9,291	10,733	43,557
2017	10,605	12,965	9,790	11,654	45,014
2018	10,237	13,119	10,957	12,186	46,499
2019	10,073	13,343	11,759	13,267	48,442
2020	9,998	13,693	12,117	14,000	49,808
2021	10,553	15,101	13,259	13,887	52,800
2022	10,361	15,253	14,000	15,020	54,634

### Assets, Liabilities, and Funded Ratio

The actuarial funded ratio is the percentage of the retirement fund's actuarial value of assets to its actuarial accrued liabilities. The actuarial value of assets is determined by spreading market appreciation or depreciation over 5 years. This procedure results in recognition of all changes in market value over 5 years. The following schedule shows the actuarial assets and liabilities of the main system DB plan since 2000.

Fiscal Year	Actuarial Value of Assets	Actuarial Value of Liabilities	Actuarial Surplus or (Unfunded Liability)	Actuarial Funded Ratio	Assumed Rate of Return	Actuarial Rate of Return <sup>1</sup>	Rate of Return Variance <sup>2</sup>
2000	\$1,009,744,796	\$879,189,877	\$130,554,919	114.8%	8.00%	13.71%	5.71%
2001	\$1,096,115,648	\$993,851,809	\$102,263,839	110.3%	8.00%	9.36%	1.36%
2002	\$1,129,697,099	\$1,087,003,336	\$42,693,763	103.9%	8.00%	3.91%	(4.09%)
2003	\$1,145,284,302	\$1,170,477,887	(\$25,193,585)	97.8%	8.00%	2.18%	(5.82%)
2004	\$1,172,258,036	\$1,250,849,240	(\$78,591,204)	93.7%	8.00%	3.16%	(4.84%)
2005	\$1,210,287,848	\$1,333,491,341	(\$123,203,493)	90.8%	8.00%	4.36%	(3.64%)
2006	\$1,286,478,642	\$1,450,113,412	(\$163,634,770)	88.7%	8.00%	7.79%	(0.21%)
2007	\$1,470,367,098	\$1,575,666,628	(\$105,299,530)	93.3%	8.00%	15.84%	7.84%
2008	\$1,571,159,912	\$1,700,171,588	(\$129,011,676)	92.4%	8.00%	8.51%	0.51%
2009	\$1,577,552,012	\$1,861,032,305	(\$283,480,293)	84.8%	8.00%	1.72%	(6.28%)
2010	\$1,576,794,397	\$2,156,560,553	(\$579,766,156)	73.1%	8.00%	1.48%	(6.52%)
2011	\$1,603,718,656	\$2,284,199,019	(\$680,480,363)	70.2%	8.00%	3.31%	(4.69%)
2012	\$1,579,933,179	\$2,442,299,210	(\$862,366,031)	64.7%	8.00%	(0.15%)	(8.15%)
2013	\$1,632,915,720	\$2,650,525,018	(\$1,017,609,298)	61.6%	8.00%	3.93%	(4.07%)
2014	\$1,837,902,845	\$2,866,511,290	(\$1,028,608,445)	64.1%	8.00%	12.20%	4.20%
2015	\$2,027,476,214	\$2,976,071,808	(\$948,595,594)	68.1%	8.00%	10.01%	2.01%
2016	\$2,180,748,616	\$3,299,381,100	(\$1,118,632,484)	66.1%	8.00%	6.59%	(1.41%)
2017	\$2,529,631,008	\$3,618,083,973	(\$1,088,452,965)	69.9%	8.00%	8.98%	0.98%
2018	\$2,752,053,305	\$3,841,701,179	(\$1,089,647,874)	71.6%	7.75%	9.22%	1.47%
2019	\$2,949,967,049	\$4,136,252,987	(\$1,186,285,938)	71.3%	7.50%	8.64%	1.14%
2020	\$3,112,920,033	\$4,557,679,020	(\$1,444,758,987)	68.3%	7.00%	7.26%	0.26%
2021	\$3,369,943,759	\$4,795,054,158	(\$1,425,110,399)	70.3%	7.00%	10.38%	3.38%
2022	\$3,553,539,588	\$5,304,187,804	(\$1,750,648,216)	67.0%	6.50%	7.43%	0.93%

<sup>1</sup>The average actuarial rate of return during fiscal years 2000 through 2022 was 6.95 percent.

<sup>2</sup>The average actuarial rate of return during fiscal years 2000 through 2022 was 0.87 percent below the average assumed rate of return.

### PUBLIC EMPLOYEES RETIREMENT SYSTEM

The committee received testimony from PERS regarding the estimated unfunded liability of the main system DB plan, issues related to the impact of closing the DB plan, and the possible effects of separating political subdivisions from state employees. Testimony indicated the main system DB plan is not expected to reach 100 percent funded status with the current statutory contribution rates and projected investment returns. Retirement funding received by PERS from state agencies is derived from the general fund (48 percent) and federal and state special funds (52 percent).

The 2013 Legislative Assembly expanded eligibility for the DC plan to include all new employees for a limited time. Approximately 3 percent of new employees chose to participate in the DC plan rather than the DB plan. The 2015 Legislative Assembly provided DC plan members the option to transfer to the DB plan. Approximately 75 percent of DC plan members transferred to the DB retirement plan. There are approximately 100 employees participating in the DC plan.

Testimony provided by PERS indicated closing the main system DB plan to new hires may have a negative effect on employee recruitment and retention for state agencies and political subdivisions and the plan's investment portfolio assumed risk rate would be gradually reduced, resulting in an increase in the plan's unfunded liability. The unfunded liability could increase to approximately \$3.1 billion, which may affect state and political subdivision bond ratings. Additional funding is needed to replace the reduction of employer and employee contributions. Additional funding can be obtained by increasing statutory contribution rates or providing for transfers from other funds to the PERS fund. Providing benefit payments to retiring members will be necessary for approximately 80 years.

Testimony provided by PERS indicated it is not possible to separate the main system DB plan between the state's responsibility and political subdivisions' responsibility.

## **ACTUARIAL REPORTS**

The committee received testimony from Gabriel, Roeder, Smith & Company Holdings, Inc. regarding the unfunded liability of the DB plan. Testimony indicated the main system DB plan unfunded liability as of July 1, 2021, was \$1.43 billion and the total actuarial rate of the main system was 19.5 percent. The unfunded liability as of July 1, 2022, was \$1.75 billion and the total actuarial contribution rate of the main system was 21.7 percent.

The main system DB plan was 70.3 percent funded on July 1, 2021, and 67 percent funded on July 1, 2022. The July 1, 2022, actuarial valuation of the main system DB plan indicated the plan is estimated to be less than 50 percent funded by 2062.

The committee was informed PERS adopted the actuary recommendation to decrease the main system DB plan investment return assumption from 7 percent to 6.5 percent effective July 2022.

## **REQUEST FOR PROPOSAL AND CONSULTANT SELECTION**

The committee received approval from the Chairman of the Legislative Management to issue a request for proposal to contract with an actuary to assist the committee with its study of developing a plan to close the PERS main system DB plan for state and political subdivision employees and transition new hires to a DC plan. The committee considered the importance of specifying the scope of the consultant's work and the possible impact decreasing retirement benefits might have on employee attraction and retention.

The committee contracted with Milliman, Inc. to provide actuarial estimates and consultation regarding options for a DC plan and potential alternatives to a DC plan. The contract provided actuary and analysis services may not exceed \$90,000 and consultative services may not exceed \$40,000. The final billing for services provided by Milliman, Inc. was not available at the time of this report but the estimated total for actuary and analysis services is \$90,000 and the estimated total for consultative services is less than \$40,000.

## **MILLIMAN, INC.**

The committee received testimony from Milliman, Inc. addressing advantages and disadvantages of DB and other plans, financing models to explore asset derisking, biennial funding, bonding, the effect of increasing employer and employee contribution rates, and the long-range financial impact of changing the retirement program for future hires.

Milliman, Inc.'s approach to the study included replicating the July 1, 2021, PERS valuation results, building interactive financial projection and retirement income models, evaluating current benefits, studying administrative and transition issues of switching from a DB plan to a DC plan, and researching alternative plan options. Milliman, Inc. surveyed committee members and interested organizations regarding the prioritization of potential retirement plan elements, including portability, contribution levels, recruitment and retention goals, ability for retirement benefits to provide lifetime income, inflation protection, efficient use of taxpayer funds, and eliminating the possibility of retirement benefit reductions.

The committee was informed alternative plans to a DB plan include a DC, cash balance, DB and DC hybrid, or variable plan. The Public Employees Retirement System offers employees the option of electing a 401(a) DC plan. Other popular DC plans include 401(k) and 457(b) plans. Milliman, Inc. reviewed a retirement alternative of state and political subdivisions participating in a DB and DC hybrid plan.

Milliman, Inc. provided alternative financial models for the PERS main system plan. Milliman, Inc. reviewed 14 DB, DC, and actuarially determined employer contribution (ADEC) plan scenarios. The scenarios include assumptions of investment returns of either 6.5 or 5.5 percent and the effect on the funded ratio of the PERS main system plan if \$0, \$50 million, or \$150 million was transferred to the PERS main system fund during the 2023-25 biennium and future bienniums. The scenarios assumed a 20-year amortization period and that a portion of contributions be redirected ("spillover") to the closed DB plan. Changing the main system plan to require new employees to enter a DC plan that includes 6 percent employee contributions and actuarially determined contributions from employers would result in the plan being 98 to 103 percent funded by 2041 and 105 to 110 percent funded by 2051, depending on investment returns.

The following is a summary of the Milliman, Inc. main system retirement plan scenarios:

Scenario	Description	Ongoing Biennial Transfers (Millions)	2023-25 Biennium Transfers (Millions)	Estimated Cumulative Employer Contributions (Billions)		Estimated Surplus (Unfunded Liability) (Billions)		Estimated Funded Ratio	
				2041	2051	2041	2051	2041	2051
Assumed Rate of Return: 6.5%									
1	Current DB plan	\$50	\$0	\$3.21	\$5.78	(\$3.92)	(\$5.39)	65%	66%
2	DC plan for new hires and 6 percent employer contributions	\$50	\$0	\$2.95	\$5.06	(\$4.76)	(\$8.29)	49%	15%
3	Scenario 2 with 1% additional employer and employee contributions	\$50	\$0	\$3.15	\$5.32	(\$4.00)	(\$6.66)	57%	31%
4	Scenario 3 with an additional \$100 million transfer	\$50	\$100	\$3.25	\$5.42	(\$3.70)	(\$6.10)	60%	37%
5	Scenario 2 but includes ADEC	\$50	\$0	\$5.91	\$7.57	\$0.23	\$0.27	102%	110%
6	Scenario 5 with an additional \$100 million transfer	\$50	\$100	\$5.83	\$7.48	\$0.94	\$0.96	103%	110%
7	Scenario 5 with no transfers	\$0	\$0	\$5.84	\$7.63	(\$0.14)	\$0.51	98%	105%
Assumed Rate of Return: 5.5%									
8	Same as scenario 1	\$50	\$0	\$3.21	\$5.78	(\$6.87)	(\$11.05)	45%	38%
9	Same as scenario 2	\$50	\$0	\$2.95	\$5.06	(\$7.16)	(\$11.94)	31%	(13%)
10	Same as scenario 3	\$50	\$0	\$3.15	\$5.32	(\$6.48)	(\$10.60)	38%	0%
11	Same as scenario 4	\$50	\$100	\$3.25	\$5.42	(\$6.22)	(\$10.16)	40%	4%
12	Same as scenario 5	\$50	\$0	\$7.72	\$9.53	\$0.12	\$0.82	101%	108%
13	Same as scenario 6	\$50	\$100	\$7.66	\$9.45	\$0.15	\$0.82	101%	108%
14	Same as scenario 7	\$0	\$0	\$7.57	\$9.58	(\$0.24)	\$0.47	98%	104%

## INTERESTED ORGANIZATIONS

### TIAA

The committee received testimony from TIAA regarding best practices for DC plans, including a review of fixed and variable annuities and retirement benefit scenarios under a DC plan. Testimony indicated TIAA has provided retirement and consulting services for the North Dakota University System for 58 years. TIAA noted best practices for DC plans include allowing all employees access to the plan, providing automatic enrollment, setting a target savings rate of between 12 and 15 percent, providing a low-cost custom default investment option that includes a guaranteed lifetime income, offering an investment menu of 15 to 20 low-cost funds and annuities, and maintaining flexibility to adjust plan goals based on outcomes, member behavior, and needs. Inclusion of an annuity in the qualified default investment alternative of a retirement plan does not conflict with federal guidelines.

### Reason Foundation

The committee received testimony from the Reason Foundation regarding alternative financial models and plan options for the PERS main system plan. Testimony indicated the average long-term portfolio returns on the main system DB plan assets have not matched long-term investment return assumptions. The Public Employees Retirement System historically has assumed an investment rate of return of 8 percent and has lowered the assumed rate to 6.5 percent. However, national data suggests assuming investment returns of 6 percent may be optimistic. Best practices for DC plans include total contributions of 10 to 15 percent of pretax earnings, encouraging the use of target date funds, and expanding lifetime income options to improve retirement security. Use of an ADEC model is necessary for the main system plan to reach 100 percent funded status and will save the state and political subdivisions billions of dollars in long-term costs. Plans suggested as alternatives to the current DB plan included, a reduced risk DB and DC hybrid plan that would stabilize market volatility for the DB plan and provide predictable benefits for DC members; a cash balance plan, which is designed to guarantee asset growth while providing a steady accrual rate to offer members portability and provide retirement security; and a plan requiring new hires to participate in a DC plan with 6 percent employer contributions and 7 percent employee contributions, providing a one-time transfer of \$100 million into the PERS fund for the main system DB plan, and using an ADEC model with a closed 20-year amortization period.

### North Dakota Association of Counties

The committee received testimony from the North Dakota Association of Counties regarding issues related to closing the PERS main system DB plan to new hires and the impact of separating the political subdivision employees from state employees. Testimony indicated 51 of 53 counties participate in a PERS retirement plan and the counties view the DB plan as a valuable workforce retention tool for participating political subdivisions. The

committee was informed active political subdivision employee membership exceeds active state employee membership, resulting in local government agencies contributing more to the DB plan than state government agencies. The North Dakota Association of Counties did not take a position on the work of the committee or bill drafts recommended by the committee.

### **North Dakota League of Cities**

The committee received testimony from the North Dakota League of Cities regarding issues related to closing the PERS main system DB plan to new hires and the impact of separating the political subdivision employees from state employees. Testimony indicated cities expressed concerns regarding recruitment and retention of employees if political subdivisions move from a DB plan to a DC plan and if the DB plan is separated between political subdivisions and the state.

### **North Dakota United**

The committee received testimony from North Dakota United regarding the committee's studies. Testimony indicated North Dakota United considers the DB plan an irreplaceable resource to recruit and retain highly talented employees. North Dakota United does not support efforts to close the main system DB plan and require new state employees and political subdivision employees to participate in a DC plan.

### **Retirement and Investment Office**

The committee received testimony from the Retirement and Investment Office regarding the status of investments of the PERS fund and effects on the Teachers' Fund for Retirement (TFFR) if the main system DB plan is closed. Testimony indicated the TFFR Board will discuss policy components of the committee's work in November 2022 in preparation for the 2023 legislative session.

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

The committee received testimony from the Office of Management and Budget Human Resource Management Services Division regarding the committee's study and the state of the workforce, including recent employee recruitment and retention trends, state employee age demographics, turnover rates by age, and turnover costs. Testimony indicated from January 2020 to January 2022, more than 600,000 workers across the country left government agencies. By 2025, Millennials and younger generations will account for approximately 75 percent of the workforce and it is estimated these workers will have held 10 to 14 jobs by age 38. After the COVID-19 pandemic, employee job location preference shifted from on-site work locations (9 percent) to remote work environments (32 percent) or a combination of on-site and remote options (59 percent). As compared to private industry, the state is not consistently attracting workers younger than 30. Twenty-five percent of state employees, excluding higher education employees, will be eligible for retirement within 5 years. Excluding higher education employees, the state has experienced employee turnover rates of 10 to 14 percent each year since 2012. The employee turnover rate in 2021 was 14 percent, derived primarily from turnover in employees aged 30 and younger. The estimated turnover cost of employees leaving state government in 2021 ranged from \$29.7 million to \$118.9 million.

### **National Conference of State Legislatures**

The committee received testimony from the National Conference of State Legislatures regarding alternatives to traditional DB plans. Testimony indicated during 2021 legislative sessions, 41 states considered pension-related legislation. As of August 2021, 11 states have replaced traditional DB plans with alternative plans and of the states with DB plans, 7 states were at least 90 percent funded while 9 states were less than 60 percent funded.

## **RETIREMENT PLANS OF OTHER STATES**

### **Alaska**

The committee received testimony from the Alaska Division of Retirement and Benefits regarding the Alaska experience of transitioning from a DB plan to a DC plan. Testimony indicated legislation enacted in 2005 resulted in a transition to a DC plan in 2006. Corrective legislation was needed in 2007 and 2009 due to the short transition period. Testimony included a discussion of the current rate of unfunded liability of the Alaska plans and how the state implemented a cash infusion transfer in 2015.

### **Oklahoma**

The committee received testimony from the Oklahoma Public Employees Retirement System regarding the Oklahoma experience of transitioning from a DB plan to a DC plan. Testimony indicated after the 2008 and 2009 financial crisis, the Oklahoma DB plan was 66 percent funded. The state undertook multiple pension reform efforts from 2010 to 2015 to address the underfunded plan, resulting in increasing the minimum member retirement age, increasing vesting requirements, eliminating rounding of employee service time, expanding the final average salary



calculation from 3 to 5 years, and eliminating cost-of-living adjustments unless the adjustments were funded by the legislature. These adjustments resulted in the funded ratio of the DB plan increasing to 80 percent funded status. The current system requires Oklahoma state employees hired after October 31, 2015, to participate in the state's DC plan. The plan provides for a minimum employee contribution of 4.5 percent with an employer match of 6 percent and an option for the employee to contribute 7 percent or more with an employer match of 7 percent. The DC plan consists of 401(a) and 457(b) plans.

### **Kansas**

The committee received testimony from a representative of the Kansas House of Representatives regarding the Kansas experience of transitioning from a DB plan to a cash balance plan. Testimony indicated in 2010, the Kansas DB plan was the second-lowest funded retirement plan in the country. Kansas formed a pension reform commission in 2011 to develop a plan to reduce the unfunded liability of the plan, minimize employer costs, reduce risk for employees, and maximize benefits for employees. The commission recommended a transition to a DB and DC hybrid plan in 2012.

## **COMMITTEE CONSIDERATIONS AND RECOMMENDATIONS**

### **Considerations**

The committee considered two revisions to a bill draft to close the PERS main system DB plan and expand the DC plan as of January 1, 2024, and two revisions to a bill draft to close the PERS main system DB plan and expand the DC plan as of January 1, 2025.

The bill draft revisions included consideration of whether to have the optional 3 percent DC employee contribution and matching employer contribution addressed as part of the DC plan or as part of the 457 deferred compensation plan, whether to codify mandatory PERS annuity provider selection requirements or whether to provide codified guidance to PERS, whether the bill drafts adequately address treatment of new hires who have prior TFFR service, whether the bill drafts adequately address how higher education's retirement plan works alongside the PERS DC plan, and whether the qualified default investment alternative should be required to include an annuity component.

The committee's final revisions to the bill drafts included clarifying the new hire use of the 457 deferred compensation plan for any optional employee contribution and employer matching contribution is not a limitation on contribution amounts, other than the federal cap, providing the \$250 million appropriation to PERS is not limited to offsetting the state's share of the PERS unfunded liability of the retirement plan, and providing the qualified default investment alternative must include an annuity component.

### **Discussion**

Discussion between the committee and PERS regarding the bill drafts indicated the committee preferred the effective date January 1, 2025, due to PERS administrative requirements, including time needed to adopt administrative rules, the hiring of four additional employees to close the DB plan and implement DC plan changes, and to contract for the annuity provider of the DC plan.

The Public Employees Retirement System indicated the estimated cost of hiring four additional employees and other transitional costs to implement requirements of bill drafts effective January 1, 2025, is approximately \$836,000. An actuarial analysis is needed to determine the total cost of the bill drafts. Upon completion of the committee's study charge, the Employee Benefits Programs Committee will determine whether to take jurisdiction over the recommended bill drafts and have actuarial analyses conducted pursuant to Section 54-35-02.4.

The committee was informed that based on the 2022 actuarial valuation, the total combined ADEC rate of the state and political subdivisions which exceeds current statutory contribution rates is approximately 13.7 percent and could be as much as a 15 percent increase. During the 2021 legislative session, a 1 percent increase in the state's employer contribution rate was estimated to cost approximately \$9.4 million for 18 months of the 2021-23 biennium.

### **Recommendations**

The committee recommends a bill draft [\[23.0280.03000\]](#) to close the main system DB plan to new hires beginning January 1, 2025, provide a one-time transfer of \$250 million from the general fund to the PERS fund to reduce the unfunded liability of the main system DB plan, create a DC plan with 4 percent employee and 4.12 percent employer contribution rates, optional additional 3 percent employee and 3 percent employer matching contributions provided through the PERS 457 deferred compensation plan; and require employer contribution rates for the DB plan to be based on ADEC rates, of which the state would be responsible for the state and political subdivision employer shares.

The committee recommends a bill draft [\[23.0196.05000\]](#) to close the main system DB plan to new hires beginning January 1, 2024, provide a one-time transfer of \$250 million from the general fund to the PERS fund to reduce the unfunded liability of the main system DB plan, create a DC plan with 4 percent employee and 4.12 percent employer contribution rates, optional additional 3 percent employee and 3 percent employer matching contributions provided through the PERS 457 deferred compensation plan; and require employer contribution rates for the DB plan to be based on ADEC rates, of which the state would be responsible for the state and political subdivision employer shares.

# TAXATION COMMITTEE

The Taxation Committee was assigned four studies for the 2021-22 interim:

- Section 45 of House Bill No. 1015 (2021) directed a study of the fiscal impact of providing a sales tax exemption for raw materials critical to the manufacturing process used to support biologic product generation, product impurity removal, chemical or physical product alteration, and analysis of in-process to final deliverable products.
- Section 1 of Senate Bill No. 2299 (2021) directed a study of the desirability and feasibility of providing a credit against the purchase of a motor vehicle in an amount not to exceed the total amount the person received for the private sale of the vehicle being replaced for purposes of calculating the motor vehicle excise tax.
- The Legislative Management assigned a study of economic development tax incentives pursuant to North Dakota Century Code Section 54-35-26.
- The Chairman of the Legislative Management assigned the committee the responsibility to study the feasibility and desirability of providing holistic tax reform and relief, focusing primarily on property tax relief and, to a lesser extent, income tax relief.

The Legislative Management assigned the committee the responsibility to receive four reports:

- An annual report from the Tax Commissioner on statewide property tax increases, pursuant to Section 57-20-04.
- An annual report from the Department of Commerce's Division of Community Services on renaissance zone progress, pursuant to 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, pursuant to 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, pursuant to Section 54-60.1-07.

Committee members were Senators Dale Patten (Chairman), Scott Meyer, Merrill Piepkorn, and Mark F. Weber and Representatives Dick Anderson, Jason Dockter, Robb Eckert, Patrick Hatlestad, Craig Headland, Tom Kading, Jim Kasper, Ben Koppelman, Vicky Steiner, and Wayne A. Trottier.

## BIOLOGIC MANUFACTURING SALES TAX EXEMPTION STUDY

Section 45 of House Bill No. 1015 (2021) directed a study of providing a sales tax exemption for raw materials critical to the manufacturing process used to support biologic product generation, product impurity removal, chemical or physical product alteration, and analysis of in-process to final deliverable products.

### Background

A sales tax exemption for materials used in the research and development of bioscience and biotechnology was proposed in House Bill No. 1456 (2021), which failed to pass, before being added as a study to House Bill No. 1015. House Bill No. 1456 would have provided a sales and use tax exemption for gross receipts from sales of tangible personal property purchased for the use, storage, or consumption directly and predominately in the research and development of bioscience and biotechnology. Bioscience was defined in the bill as the use of compositions, methods, and organisms in cellular and molecular research, development, and manufacturing processes in areas, including pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry, microbiology, veterinary medicine, plant biology, and agriculture and industrial, environmental, and homeland security applications of bioscience. Biotechnology was defined in the bill as the application of technologies to produce or modify products, to develop micro-organisms for specific uses, to identify targets for small pharmaceutical development, or to transform biological systems into useful processes or products. The term also was defined as the potential endpoints of the resulting products, processes, micro-organisms, or targets for improving human or animal health care outcomes. For purposes of the exemption, tangible personal property was defined to include capital equipment, instruments, apparatuses, inputs, and supplies used in laboratories, including microscopes, machines, glassware, chemical reagents, computers, computer software, and technical books and materials. The estimated fiscal impact of House Bill No. 1456 could not be determined during the 2021 legislative session.

Testimony provided on House Bill No. 1456 indicated the bioscience and biotechnology industry spans many markets, including manufacturing, services, and research activities. The bill received support from various economic development entities, the Bioscience Association of North Dakota, the North Dakota Soybean Growers Association, and a bioscience firm located in the state.

## **Sales and Use Tax Imposition and Exemptions**

The application of sales and use tax is governed by Chapters 57-39.2 and 57-40.2. A sales tax of 5 percent is imposed on the gross receipts of retailers for all sales at retail of tangible personal property. The tax is paid by the purchaser and collected and remitted by the retailer. Use tax, which also is imposed at a rate of 5 percent, is applied to tangible personal property purchased at retail for storage, use, or consumption in this state or tangible personal property purchased outside this state but later brought into this state. Use tax is applied to the purchase price of an item at the time of purchase, or to the fair market value of the item at the time it is brought into this state. Use tax must be paid directly by the person storing, using, or consuming the property in the state if the tax was not remitted by the retailer at the time of purchase.

A wide range of products, services, and activities are exempt from the imposition of sales and use tax. In addition, various groups and entities, such as hospitals, schools, and state and federal governments, are exempt from paying sales and use tax on some, or all, of their purchases. Sales tax exemptions specific to manufacturing include the exemption provided in Section 57-39.2-04.3 for machinery or equipment used primarily for manufacturing or agricultural processing or solely for recycling.

Notable sales and use tax exemptions specifically targeting the bioscience and biotechnology industry include exemptions provided in Connecticut, Maine, Missouri, Texas, and Wisconsin. With the exception of House Bill No. 1456, no other recent legislation has been proposed in North Dakota relating to a sales tax exemption for materials used in the research and development of bioscience or biotechnology.

## **Testimony and Committee Considerations**

The committee received information from representatives of the Bioscience Association of North Dakota regarding the bioscience and biotechnology industry in North Dakota and the potential benefits of a sales tax exemption specifically targeted to the bioscience and biotechnology industry. The committee was informed North Dakota is recognized as an upcoming leader in the biotechnology industry. According to a 2018 study conducted by the Biotechnology Innovation Organization, the bioscience and biotechnology industry adds \$267.3 million per year to the North Dakota economy. As of 2020, 3,959 people were employed in the bioscience and biotechnology industry at over 570 establishments in the state with an average annual wage of \$73,937. Since 2018, the number of bioscience and biotechnology entities in the state increased by 8.7 percent, and the number of bioscience and biotechnology industry employees in the state increased by 83.3 percent.

Representatives of the Bioscience Association of North Dakota indicated sales and use tax imposes a greater burden on bioscience and biotechnology companies than income tax. Bioscience and biotechnology companies review available sales tax exemptions when determining whether to locate their businesses in the state. Thirty-eight states provide a sales tax exemption applicable to equipment used in research and development, 36 states provide a sales tax exemption applicable to equipment purchased for biomanufacturing, and 11 states provide sales tax exemptions specifically targeted to bioscience firms. A number of states offer a more competitive business environment for the bioscience industry than North Dakota, including California, Massachusetts, New Jersey, New York, Connecticut, Pennsylvania, Maryland, North Carolina, and Texas.

The committee received testimony from the Tax Department regarding the application of the sales tax exemption applicable to certain raw materials. The committee was informed when a piece of tangible property is sold, it is subject to sales tax unless there is an exemption. If a product is sold as a raw material to be used in the production of another product, the company purchasing the raw material to incorporate into the final product can purchase the raw material without paying tax. However, if there are reagents, resins, or chemicals that react with the product but do not become part of the final product, those materials are considered consumables and are subject to sales tax.

The committee received testimony from representatives of the bioscience and biotechnology industry regarding the industry and the benefits of a sales and use tax exemption related to biologic and biotechnology research and development and manufacturing. The committee was informed the state has a growing ecosystem for bioscience and biotechnology. Providing a sales and use tax exemption related to biologic and biotechnology research, development, and manufacturing would be a tool to strengthen the bioscience and biotechnology ecosystem in the state by attracting biologic and biotechnology research and development projects.

Committee members recognized the bioscience and biotechnology industry is growing and acknowledged providing tax incentives to this industry may result in an increase in bioscience and biotechnology companies relocating to the state and may create more jobs in North Dakota communities. Committee members also analyzed state tax and finance incentives available to the bioscience and biotechnology, manufacturing, and agricultural industries to determine which incentives are available to the bioscience and biotechnology industry and elected not to proceed with recommending any additional incentives.

## **Conclusions**

The committee makes no recommendations in regard to its study of providing a sales tax exemption for raw materials critical to the manufacturing process used to support biologic product generation, product impurity removal, chemical or physical product alteration, and analysis of in-process to final deliverable products.

## **MOTOR VEHICLE EXCISE TAX CREDIT STUDY**

Senate Bill No. 2299 (2021) directed a study of the desirability and feasibility of providing a credit against the purchase of a motor vehicle in an amount not to exceed the total amount the person received for the private sale of the vehicle being replaced for purposes of calculating the motor vehicle excise tax. The study required a review of the current law applied to credits for trade-ins, motor vehicle sale industry practices, vehicles of a certain age, and the potential fiscal and technological impact on the state. The study also required consideration of the potential for tax fraud, the effect on child support collections, and implications regarding consumer protection.

## **Background**

The provision of a motor vehicle excise tax credit against the purchase price of a replacement vehicle in an amount not to exceed the amount the person received for the sale of the vehicle the person is replacing was proposed in Senate Bill No. 2312 (2021), which failed to pass. The bill, in part, required the purchaser of the vehicle being replaced to provide the seller a copy of the motor vehicle purchaser's certificate required under Section 57-40.3-05. The bill required the seller to attach a copy of the purchaser's certificate to the seller's application for a certificate of title for the replacement vehicle. The bill allowed the credit to be claimed within 3 years of the date of sale listed on the purchaser's certificate. The fiscal note for the bill estimated a revenue reduction of \$38,926,788 per biennium as a result of providing the credit. The fiscal note also indicated the Department of Transportation (DOT) would require two additional full-time equivalent (FTE) positions to process the additional workload resulting from the credit, at a cost of \$247,056 per biennium.

Testimony provided on Senate Bill No. 2312 indicated concerns regarding the unequal motor vehicle excise tax treatment applied to the purchase of a replacement vehicle when the vehicle being replaced was traded in at the dealership versus sold in a private party sale. Currently, a trade-in credit only is allowed on retail motor vehicle sales.

Testimony provided by a representative of DOT indicated the expanded application of the credit would result in a significant increase in staff time to verify ownership and eligibility for the credit, increased service delivery time per transaction, and significant opportunities for misuse. Testimony provided by a representative of the Automobile Dealers Association of North Dakota in opposition to the expansion of the credit indicated more stringent consumer protection regulations apply to transactions entered by motor vehicle dealers than those entered by private parties, which might expose consumers to fraud or overestimated prices. The potential for avoidance of child support payments also was raised as a concern. Testimony indicated a lien is placed on a motor vehicle owned by an individual with an outstanding child support obligation. When the vehicle is sold, a motor vehicle dealer conducts a lien search and remits any required amount of the sale price to the Child Support Enforcement Division. In a private sale, the lien likely will go unnoticed unless the lien is marked on the title, which is uncommon. Concerns also were expressed regarding the potential for tax fraud in the absence of a sound method for validating the date of the sale and the purchase price of the motor vehicle sold in a private sale. Testimony addressed a partial solution to the issue Senate Bill No. 2312 sought to remedy. Testimony referenced "in and out" or "paper trade" transactions, which allow a purchaser to purchase a vehicle from a dealer and sell the vehicle they are replacing to a third party through the dealer, rather than directly. This practice allows the consumer to realize a tax credit on the trade-in.

In addition to the directive to study the law applied to vehicles of a certain age in Senate Bill No. 2299, a motor vehicle excise tax exemption also was proposed for the sale of vehicles of a certain age in Senate Bill No. 2255 (2021), which failed to pass. Senate Bill No. 2255 provided an exemption from motor vehicle excise tax for the sale of a vehicle that is at least 40 years old. The Department of Transportation indicated approximately 6,900 vehicles that are at least 40 years old are sold each year in the state. Based on the data provided by DOT, the estimated reduction in general fund and state aid distribution revenues anticipated as a result of the exemption was \$1.3 million for the 2021-23 biennium. Testimony provided on Senate Bill No. 2255 indicated the vehicle age threshold of 40 years was selected because that is the age required for vehicles to qualify for antique license plates for a one-time registration fee of \$10.

## **Motor Vehicle Excise Tax Imposition**

Pursuant to Section 57-40.3-02, any vehicle required to be registered in North Dakota is subject to a motor vehicle excise tax of 5 percent of the purchase price of the motor vehicle. The purchase price of a motor vehicle equals the sales price less any trade-in amount, or the fair market value of the vehicle if the vehicle is acquired in a manner other than by purchase. The tax is in addition to motor vehicle registration fees imposed for license plates. The tax is collected by the Director of DOT who acts as an agent of the Tax Commissioner.

## **Recent Legislation**

In addition to Senate Bill Nos. 2312 and 2255, which failed to pass, one additional bill relating to the imposition of motor vehicle excise tax was introduced during the 2021 legislative session. Senate Bill No. 2277, which was enacted by the 67<sup>th</sup> Legislative Assembly, created a motor vehicle excise tax exemption for any motor vehicle transferred from an individual to a former spouse of the individual if the transfer results from a divorce decree and occurs within 1 year after the date the divorce became final.

## **Testimony and Committee Considerations**

The committee received testimony from a representative of DOT regarding the fiscal impact of Senate Bill Nos. 2312 and 2255. The committee was informed the data used to prepare the fiscal notes associated with the bills was car sales data for calendar years 2019 and 2020 and indicated a \$1.3 million loss in revenue. The loss in revenue depicted on the fiscal note associated with Senate Bill No. 2255 was based on the number of vehicles that did not qualify for a motor vehicle exemption at that time, but would have qualified if the 67<sup>th</sup> Legislative Assembly had enacted Senate Bill No. 2255. The fiscal note associated with Senate Bill No. 2312 reflected an approximately \$39 million loss in motor vehicle excise tax collections due to the proposed expansion of a purchase price tax credit for private motor vehicle sale transactions and the cost associated with two additional full-time employees.

The committee received information from a representative of the Department of Human Services regarding the child support lien registry. The committee was informed any real or titled property of an obligor or acquired by an obligor who is listed on the child support lien registry is subject to a lien. However, a child support lien is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on the vehicle title. This good-faith purchasers exception protects individuals who are not in the business of buying and selling cars and are not aware of the law. The committee also was informed over 870 child support payments are made each year based on the online lien registry maintained by the department. An increase in private car sales to good-faith purchasers as compared to retail car sales likely will result in less past-due child support being collected.

The committee received testimony from a representative of the Tax Department regarding the history of motor vehicle excise tax and the application of a trade-in credit for retail motor vehicle sales. The committee was informed the state first imposed a tax in 1937 on a motor vehicle's selling price when registering it for the first time or applying for a certificate of title. In 1963, the state enacted a motor vehicle excise tax to be assessed on motor vehicles in lieu of personal property tax. This 1963 legislation did not include a trade-in allowance as part of the definition of the taxable purchase price. Legislation passed in 1965 amended the motor vehicle excise tax laws to ensure casual motor vehicle sales were subject to the motor vehicle excise tax and to add a motor vehicle trade-in allowance credit. Legislation passed in 1969 expanded the trade-in allowance credit to include additional trade-in items that would be subject to sales or use tax. The committee was informed of 6 of the 45 states that collect tax on sales of motor vehicles do not offer a trade-in tax credit on the retail sale of motor vehicles.

The committee received testimony from a representative of the Automobile Dealers Association of North Dakota. Testimony indicated the committee should review various items when considering the expansion of the motor vehicle excise tax credit to include private motor vehicle sales, including consumer protection issues, increased potential for tax fraud, lost tax revenue, and adverse effects on child support enforcement. Testimony indicated an "in and out" or "paper trade" sale is an available alternative to a private motor vehicle sale which would allow a consumer to claim the motor vehicle excise tax credit. In this type of sale, an automobile dealer purchases a trade-in vehicle from the consumer at the price the consumer was going to sell the vehicle to the third party and then immediately sells the vehicle to the third party at cost without any fees. This alternative allows a consumer to realize a tax credit on the trade-in.

Committee members expressed mixed opinions regarding expansion of the motor vehicle excise tax credit to include private motor vehicle sales. Committee members acknowledged the potential advantage provided to motor vehicle dealerships resulting from a trade-in credit being available to dealerships on retail motor vehicle sales and not to individuals who engage in private party vehicle sales. The committee determined an "in and out" or "paper trade" sale is a sufficient alternative to providing a credit applicable to private motor vehicle sales.

## **Conclusions**

The committee makes no recommendations in regard to its study of the desirability and feasibility of providing a credit against the purchase of a motor vehicle in an amount not to exceed the total amount the person received for the private sale of the vehicle being replaced for purposes of calculating the motor vehicle excise tax.

## **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 interim Taxation Committee to review tax incentives during the 2021-22 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. In the most recent May 2019 update, Pew identified 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 was 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.

## Summary of the First 6-Year Review Cycle

The following incentives were reviewed by the designated interim committee during the first 6-year economic development tax incentive review cycle:

First 6-Year Review Cycle		
2015-16 Interim	2017-18 Interim	2019-20 Interim
Agricultural commodity processing facility investment tax credit	Renaissance zone credits and exemptions	Manufacturing and recycling equipment sales tax exemption
Angel fund investment tax credit	Research expense credit	Fertilizer or chemical processing facility sales tax exemption
Biodiesel fuel credits	Internship program credit	Carbon dioxide capture and injection sales tax exemption
Manufacturing automation tax credit	Workforce recruitment credit	Qualified data center sales tax exemption
Microbusiness income tax credit	New or expanding business exemptions	Fuel tax refunds
Seed capital investment tax credit	New jobs credit from income tax withholding	Coal severance and conversion tax exemptions
Soybean or canola crushing facility credit	Development or renewal area incentives	Oil and gas gross production and oil extraction tax exemptions
Wage and salary credit		
Certified nonprofit development corporation investment tax credit		

First 6-Year Review Cycle		
2015-16 Interim	2017-18 Interim	2019-20 Interim
Electrical generating facilities sales tax exemption		
Geothermal, solar, wind, and biomass energy device credit		
Telecommunications infrastructure sales tax exemption		

### 2021-22 Review of Incentives

The committee was selected to conduct the economic development tax incentives study during the 2021-22 interim and selected eight incentives to review from the list provided in Section 54-35-26. The committee selected the research expense credit, agricultural commodity processing facility investment credit, seed capital investment credit, soybean or canola crushing facility construction or retrofit credit, manufacturing automation equipment credit, new or expanding business exemptions, manufacturing and recycling equipment sales tax exemption, and new jobs credit from income tax withholding for study.

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. The committee received information from representatives of the Tax Department and the Department of Commerce regarding the number of claimants, amounts claimed for each incentive, and other information related to the incentives selected for review. The committee also solicited testimony from interested parties regarding the incentives selected for study.

The committee discussed the difficulty of evaluating the impact and effectiveness of the incentives selected for study without access to a broad range of relevant data and testimony from interested parties. Committee members noted streamlined reporting requirements for each incentive likely would provide future committees tasked with evaluating incentives information useful to its analysis. Committee members received information regarding reporting requirements applicable to each incentive selected for study. Committee members ultimately expressed mixed opinions regarding the value and feasibility of streamlined or uniform reporting requirements across all incentives, as compared to reporting requirements uniquely targeted to each incentive.

### Research Expense Credit

#### Explanation of the Credit

Section 57-38-30.5 provides for a research expense tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for expenditures related to conducting qualified research in this state. The amount of the credit is equal to a percentage of qualified research expenses which exceed a defined base amount. The definitions of "qualified research expenses" and "base amount," for purposes of Section 57-38-30.5, have the same meaning as provided in Section 41 of the Internal Revenue Code [26 U.S.C. 41], with the exception that any expenses incurred for research conducted outside North Dakota are excluded. The credit is equal to 25 percent of the first \$100,000 in qualified expenses that exceed the base amount and a varying percentage of any amounts exceeding the first \$100,000. The percentage credit allowed on amounts exceeding the first \$100,000 in excess qualified expenses varies based on the year in which a taxpayer first began conducting qualified research in this state.

For qualified research in North Dakota which began before 2007, the percentage credit allowed on amounts exceeding the first \$100,000 in excess qualified expenses is 7.5 percent for tax year 2007, 11 percent for tax year 2008, 14.5 percent for tax year 2009, 18 percent for tax years 2010 through 2016, and 8 percent for tax year 2017 and any subsequent tax years. A taxpayer qualifying for the credit under these conditions is limited to claiming no more than \$2 million in credits in any taxable year and may not apply the amount of any unused credits in any other taxable year.

For qualified research in North Dakota which began on or after January 1, 2007, and before January 1, 2011, the percentage credit allowed on amounts exceeding the first \$100,000 in excess qualified expenses is equal to 20 percent for taxable years 2007 through 2016. If qualified research in North Dakota began on or after January 1, 2011, the percentage credit allowed on amounts exceeding the first \$100,000 in excess qualified expenses is 8 percent. The percentage of allowable credit on amounts exceeding the first \$100,000 in excess qualified expenses also is 8 percent for any credits claimed in taxable years after 2016, regardless of when the taxpayer first began conducting qualified research in this state.

A taxpayer may elect to use an alternative, simplified method for calculating the research and experimental expenditures income tax credit, which is similar to the simplified method provided under federal tax law for calculating the federal research tax credit. Under the alternative method, the credit is equal to 17.5 percent of the first \$100,000 of the alternative excess research and development for the taxable year. The percentage credit allowed on amounts



exceeding the first \$100,000 of the alternative excess research and development for the taxable year is 5.6 percent. Alternative excess research and development is defined in Section 57-38-30.5 as "the amount of qualified research expenses which exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined." If a taxpayer does not have qualified research expenses in 1 of the 3 taxable years preceding the taxable year the credit is determined, the amount of qualified research expenses for the taxable year is multiplied by 7.5 percent of the first \$100,000 plus 2.4 percent of qualified research expenses for the taxable year in excess of \$100,000.

For a taxpayer that began conducting qualified research in this state on or after January 1, 2007, any credit amount exceeding a taxpayer's liability may be carried back to each of the 3 preceding taxable years or carried forward to each of the 15 succeeding taxable years. A passthrough entity entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level. A taxpayer entitled to the credit, and filing a consolidated return, may claim the credit against the aggregate North Dakota tax liability of all corporations included on the consolidated return except in the case of credits received by way of sale, transfer, or assignment.

### **Perceived Goals in Creating or Altering the Credit**

Section 57-38-30.5, which provides for a research expense tax credit, was created through the passage of House Bill No. 1645 (1987). As first enacted, Section 57-38-30.5 provided for a corporate income tax credit equal to 8 percent of the first \$1.5 million of North Dakota qualified research expenses in excess of base period research expenses, and 4 percent of any amount exceeding \$1.5 million in excess research expenses. The 1987 legislation was patterned after a Minnesota law that had proved to be very successful for that state. Upon a review of the legislative history pertaining to House Bill No. 1645, the perceived goal of the Legislative Assembly in creating this credit was to encourage new and existing North Dakota corporations to undertake research and development. The credit was seen as a tool to help stimulate economic development. The credit was expanded to limited liability companies in 1993 and to passthrough entities and individuals in 2007. Legislation passed in 2007 also broadened the scope of the credit by allowing a taxpayer to sell, transfer, or assign up to \$100,000 in unused credits. The goal of expanding the credit in 2007 was to attract new businesses to this state to conduct research activity and retain those businesses already present. Additional technical corrections pertaining to definitions and filing methods were made in 2009 and safeguards were added in 2013 to prevent references to federal definitions from becoming ineffective if the federal research tax credit was discontinued. The credit was further modified by 2017 legislation, which created a uniform definition of "primary sector business" in Title 1. The most recent change to the credit was made in 2019, which provided an alternative, simplified method for calculating the research and experimental expenditures income tax credit.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the number of claimants and the amounts claimed on individual and corporate income tax returns from 2006 to 2020. According to the testimony, in 2020, the total reportable income tax reduction attributable to the credit was \$7,711,106, and the credit was claimed on 473 individual tax returns and 23 corporate income tax returns. The committee also received testimony in support of retaining the credit from representatives of the Department of Commerce and Economic Development Association of North Dakota.

Testimony in support of retaining the credit indicated the credit helps the Department of Commerce attract technology and research and development companies to the state and encourages capital investment in North Dakota businesses. In addition, the credit supports economic diversification and workforce recruitment and is important to attract businesses to the state and remain competitive with other states. The committee did not receive testimony in support of eliminating or modifying the credit. The committee did not identify any concerns relating to the credit or ways in which the credit could be improved.

### **Conclusions**

The committee makes no recommendation regarding the research expense tax credit.

## **Agricultural Commodity Processing Facility Investment Credit**

### **Explanation of the Credit**

Section 57-38.6-03 provides for an agricultural commodity processing facility investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for qualified investments made in a qualifying business. A "qualifying business" is defined as an entity organized or incorporated in this state after December 31, 2000, for the primary purpose of being an agricultural commodity processing facility. A qualifying business also must be certified by the Securities Commissioner, be in compliance with North Dakota security laws, and have an agricultural commodity processing facility in this state or intend to locate a facility within this state. An agricultural commodity processing facility consists of a facility that adds value to an agricultural commodity raised in North Dakota or a livestock feeding, handling, milking, or holding operation that uses a byproduct from a biofuels production facility.

The credit is equal to 30 percent of the amount of the qualified investment which may consist of direct cash payments, direct cash transfers from a retirement plan, or transfers of a fee simple interest in real property in this state. A qualifying investment must be at risk in the qualifying business for at least 3 years and be in the form of a purchase ownership interest or right to receive payment of dividends from the business. A qualified business must file with the investor, Tax Commissioner, and Director of the Department of Commerce's Division of Economic Development and Finance information identifying each taxpayer making an investment, the amount remitted by the taxpayer, and the date on which the investment was received by the qualifying business. A taxpayer may claim no more than \$50,000 in credits per taxable year and no more than \$250,000 in credits over any combination of taxable years. Credit amounts exceeding a taxpayer's liability may be carried forward for up to 10 taxable years following the year in which the investment was made.

### **Perceived Goals in Creating or Altering the Credit**

Provisions relating to the agricultural commodity processing facility investment tax credit were enacted in 2001 and provided a credit to individual income taxpayers for investments in a cooperative or limited liability company organized to process and market agricultural commodities, having an agricultural commodity processing facility in this state, and having a majority of its ownership interests owned by producers of unprocessed agricultural commodities. The maximum annual investment for which the credit was allowed was \$20,000 and no more than 50 percent of the credit could be claimed in a single taxable year. The credit also could not exceed 50 percent of the taxpayer's income tax liability. Investments were required to remain in a qualifying business for the same period of time, and be expended for the same purposes, as specified in current law. The perceived goal of the Legislative Assembly in creating this credit was to provide an incentive to encourage investment in value-added processing facilities for North Dakota commodities. The credit was described as a tool that would benefit producers, create jobs, and reduce reliance on federal assistance to maintain farm income. Credits related to the production and sale of ethanol in Minnesota and South Dakota were discussed and it was noted the average cost of constructing an ethanol plant was roughly \$40 million. The estimated fiscal effect of the agricultural commodity processing facility investment tax credit could not be determined during the 2001 legislative session. The credit was broadened in 2005 to allow qualifying investments to be made by corporations and passthrough entities, but the credit was limited to investments made in the first 10 qualifying businesses. The maximum annual credit limit allowed per taxpayer also was increased from \$20,000 to \$50,000 and the lifetime amount of credit per taxpayer was limited to \$250,000. The changes were intended to make the credit more functional and more user-friendly. Carryforward provisions related to the credit were revised in 2007 and extended to 10 years.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the number of individual and corporate income tax returns on which the agricultural commodity processing facility investment tax credit was claimed and the estimated reduction in tax from tax years 2006 through 2020. In 2020, the total reportable income tax reduction attributable to the credit was \$590,809, and the credit was claimed on 64 individual tax returns and no corporate income tax returns. The committee also received testimony in support of retaining the credit from representatives of the Department of Commerce, Economic Development Association of North Dakota, and North Dakota Ethanol Producers Association.

Testimony in support of retaining the credit indicated the credit is immensely valuable to the Department of Commerce when recruiting new, value-added agriculture investments to the state. In addition, the credit has been instrumental in establishing and growing the state's ethanol industry by encouraging investment in value-added processing for commodities in the state. The credit supports economic diversification and workforce recruitment and is important to attract businesses to the state and remain competitive with other states. The committee did not receive testimony in support of eliminating or modifying the credit. The committee did not identify any concerns relating to the credit or ways in which the credit could be improved.

### **Conclusions**

The committee makes no recommendation regarding the agricultural commodity processing facility investment tax credit.

## **Seed Capital Investment Credit**

### **Explanation of the Credit**

Section 57-38.5-03 provides for a seed capital investment tax credit. The incentive is available to all income taxpayers and allows for a credit against state income tax liability for qualified investments made in a qualifying business. A "qualifying business" is defined in Section 57-38.5-01 as a primary sector business, certified by the Director of the Department of Commerce's Division of Economic Development and Finance, which relies on innovation, research, or the development of new products and processes for growth and profitability. A qualifying business must be in compliance with the state's security laws and must be a for-profit corporation, passthrough entity, or joint venture with the majority of the businesses in-state employees being North Dakota residents. The business must have its principal office located in this state and perform the majority of its business activities in this state, with the exception of sales activities, or the

business must have significant current or anticipated operations in North Dakota, which consist of employing more than 10 employees or reaching more than \$150,000 in annual sales. A qualifying business does not include a real estate investment trust.

The credit is equal to 45 percent of the amount of the qualified investment which must be at risk in the qualifying business for at least 3 years. Investments placed in escrow will not qualify for the credit. A qualifying business must expend investment amounts for equipment, plant facilities, research and development, marketing, or working capital. A taxpayer, or a member of the taxpayer's immediate family, with substantial interests in qualified business, may not receive a credit for qualified investments in that business.

A taxpayer may claim no more than \$112,500 in credits per taxable year. Credit amounts exceeding a taxpayer's liability may be carried forward for up to 4 taxable years. Credits determined at the passthrough entity level must be passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity. Pursuant to Section 57-38.5-07, a qualified business is required to file with the investor, the Tax Commissioner, and the Department of Commerce information identifying each taxpayer making an investment, the amount remitted by the taxpayer, and the date on which the investment was received by the qualifying business. The total aggregate amount of all seed capital investment tax credits allowed per year is limited to \$3.5 million. If the amount of credits applied for exceed the maximum yearly cap, credits must be awarded based on the date each investment was received by a qualifying business. The maximum aggregate amount of qualified investments upon which the credit may be based may not exceed \$500,000 for any one qualified business over any combination of tax years.

### **Perceived Goals in Creating or Altering the Credit**

Provisions relating to the seed capital investment tax credit were first enacted in 1993. The total aggregate amount of all seed capital investment tax credits allowed per year was limited to \$250,000. Upon a review of the legislative history relating to the enactment of the seed capital investment tax credit, the perceived goal of the Legislative Assembly in creating the credit was to stimulate private investment in new and growing North Dakota companies to help diversify and expand the state's economy. It was estimated the seed capital investment tax credit could result in a reduction in general fund revenues of up to \$500,000 during the 1993-95 biennium.

The credit was amended in 2001 to increase the aggregate amount of allowable seed capital investment tax credits from \$250,000 to \$1,000,000 through calendar year 2002 and to \$2,500,000 after calendar year 2002. The number of North Dakota employees a qualified business was required to employ was decreased to 10 and annual sales requirements were decreased to \$150,000. An organization that attracted investments to build and own a value-added agricultural processing facility that it leased with an option to purchase to a primary sector business also could be classified as a qualified business.

The credit was amended in 2003 to eliminate the \$250,000 limit per qualifying business and increase the available credit amount from 30 to 45 percent of the amount of the qualifying investment. Amendments in 2005 further expanded the credit to allow it to be claimed by corporations and passthrough entities. Changes in 2005 also limited qualified investments in a qualified business for which a credit could be claimed to a maximum of \$500,000. Changes to the credit in 2007 expanded the credit to allow investments by an angel fund to be eligible for the seed capital investment tax credit and reduced the maximum amount that could be claimed by a taxpayer to \$112,500 per year. Provisions regarding certification of a qualified business by the Department of Commerce also were revised.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the number of individual and corporate income tax returns on which the seed capital investment credit was claimed and the estimated reduction in tax from tax years 2006 through 2020. In 2020, the total reportable income tax reduction attributable to the credit was \$1,291,600, and the credit was claimed on 50 individual tax returns and no corporate income tax returns. The committee also received testimony in support of retaining the credit from representatives of the Department of Commerce and Economic Development Association of North Dakota.

Testimony in support of retaining the credit indicated the credit helps the Department of Commerce attract technology and research and development companies to the state and encourages capital investment in North Dakota businesses. In addition, the credit supports economic diversification and workforce recruitment and is important to attract businesses to the state and remain competitive with other states. The committee did not receive testimony in support of eliminating or modifying the credit. The committee did not identify any concerns relating to the credit or ways in which the credit could be improved.

### **Conclusions**

The committee makes no recommendation regarding the seed capital investment credit.

## **Soybean or Canola Crushing Facility Construction or Retrofit Credit**

### **Explanation of the Credit**

Section 57-38-30.6 provides for a soybean or canola crushing facility construction or retrofit credit. The incentive is available to corporate income taxpayers and allows for a credit against state income tax liability in the amount of 10 percent per year for 5 years of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing crushed soybeans or canola. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years, but a taxpayer is limited to claiming no more than \$250,000 in credits over any combination of taxable years. Eligible costs incurred by a taxpayer before a facility begins crushing soybeans or canola may not be claimed for purposes of the credit until taxable years on or after crushing begins.

### **Perceived Goals in Creating or Altering the Credit**

Provisions relating to construction or retrofit income tax credits were enacted in 2003. As enacted, Section 57-38-30.6 provided a corporate income tax credit for costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel by volume. The credit was expanded in 2009 to apply to the costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing crushed soybeans or canola. The perceived goal of the Legislative Assembly in creating this credit was to encourage the modification of existing facilities or the construction of new facilities capable of crushing soybeans or canola to process those commodities in North Dakota rather than shipping them out of state for processing. It was noted large amounts of soybeans were being shipped to neighboring states such as Minnesota and South Dakota for crushing and processing. The credit was viewed as a tool to help build a stronger rural economy in North Dakota. The estimated fiscal effect of the soybean or canola crushing facility construction or retrofit credit could not be determined during the 2009 legislative session.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the number of individual and corporate income tax returns on which the soybean or canola crushing facility construction or retrofit credit was claimed and the estimated reduction in tax from tax years 2006 through 2020. The committee was informed the credit has not been claimed through the 2020 taxable year. The committee also received testimony in support of retaining the credit from representatives of the Department of Commerce, North Dakota Soybean Growers Association, Economic Development Association of North Dakota, and Archer Daniels Midland Company.

Testimony provided in favor of retaining the credit indicated the credit is valuable to the Department of Commerce when recruiting new, value-added agriculture investments to the state. The credit also is valuable to the soybean industry. Soybeans are a profitable crop in the state, typically grown in every county. As of April 2022, the closest soybean crushing plant was located in Aberdeen, South Dakota. A representative of the North Dakota Soybean Growers Association provided information regarding plans for construction of two soybean crushing facilities in the state which would help meet the fast-growing demand from food, feed, industrial, and biofuel customers. The estimated crushing capacities of both anticipated soybean crushing facilities only would accommodate half of the statewide soybean capacity. One of the companies with plans to construct a soybean crushing facility indicated the state incentive package received by the company was key in solidifying the company's decision to continue expanding operations in the state.

A representative of the North Dakota Soybean Growers Association recommended the committee consider indexing incentives available to the soybean crushing industry to account for changes in the soybean crushing plant market because the incentive programs were established several years ago. No other recommended modifications were provided to the committee. The committee did not receive testimony in support of eliminating the credit. The committee did not identify concerns relating to the credit.

### **Conclusions**

The committee makes no recommendation regarding the soybean or canola crushing facility construction or retrofit credit.

## **Manufacturing Automation Equipment Credit**

### **Explanation of the Credit**

Section 57-38-01.36 provides for an income tax credit for purchases of manufacturing machinery and equipment for the purpose of automating a manufacturing process in this state to improve job quality and increase productivity. The incentive is available to any income taxpayer certified by the Department of Commerce as a primary sector business. A primary sector business is defined in Section 1-01-49 as a business that employs knowledge or labor to add value to a product, process, or service that results in the creation of new wealth. The credit is equal to 20 percent of the cost of the manufacturing machinery and equipment purchased in the taxable year for purposes of automating a manufacturing process to improve job quality and increase productivity. Qualified expenditures for purchases of manufacturing

machinery and equipment used to calculate the automation tax credit may not be used to calculate any other income tax deduction or credit allowed under Chapter 57-38.

For purposes of Section 57-38-01.36, qualifying manufacturing machinery and equipment means new or used automation and robotic equipment used to upgrade or advance a manufacturing process. Qualifying manufacturing machinery and equipment does not include replacement automation and robotic equipment that does not upgrade or advance a manufacturing process. A qualifying purchase of manufacturing machinery and equipment includes items acquired under a capital lease, but only for the taxable year in which the lease was executed. For purposes of calculating the credit, items acquired under a capital lease will be valued at fair market value at the time the lease was executed. The credit must be claimed in the taxable year in which the manufacturing machinery and equipment was purchased, and the amount of the credit claimed may not exceed the taxpayer's income tax liability. Any credit amount exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years.

The aggregate amount of credits allowed may not exceed \$1 million in each calendar year. Any credits left unclaimed at the end of a calendar year may be carried forward for dispersal in the succeeding calendar year. If a claim for credits is made in excess of the statutorily available amount, the Tax Commissioner shall prorate the available credits among all claimants. If a taxpayer entitled to the credit is filing a consolidated return, the taxpayer may claim the credit against the aggregate North Dakota tax liability of all corporations included on the consolidated return. A passthrough entity entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level.

The Department of Commerce must provide the Tax Commissioner the name, address, and federal identification number or Social Security number of each taxpayer approved as qualifying for the credit. The Department of Commerce also must provide the Tax Commissioner with a list of any items approved as qualified expenditures. The taxpayer must provide the Tax Commissioner the name, address, and federal identification number or Social Security number of the taxpayer making the purchase as well as a list of each item of machinery or equipment purchased for purposes of automation, the amount paid for each item, and the date on which payment for the item was made. This information must be provided with the taxpayer's return.

Within 1 year after claiming the tax credit, a taxpayer must file a report documenting the improved job quality or increased productivity required to receive the credit and any other information the Tax Commissioner determines is necessary. For purposes of Section 57-38-01.36, "improved job quality" means a 5 percent increase in average wages or a 5 percent improvement in workplace safety as documented through participation in Workforce Safety and Insurance safety incentive programs. "Increased productivity" is defined as no less than a 5 percent increase in output or a 5 percent increase in the number of units produced per automated line per time period. Failure to document the improved job quality or increased productivity requirements is cause to disallow the credit due to noncompliance. If a taxpayer fails to document the improved job quality or increased productivity requirements, the Tax Commissioner must notify the taxpayer, and the taxpayer must file an amended return within 90 days after the date of the notice. If an amended return is not filed timely, the Tax Commissioner must disallow the credit and assess any tax due as final and irrevocably fixed.

The credit is available through December 31, 2022.

### **Perceived Goals in Creating or Altering the Credit**

Provisions relating to an automation income tax credit for purchases of manufacturing machinery and equipment used to automate a manufacturing process were first discussed by the 2009-10 interim Workforce Committee as a result of the committee's study of technology-based entrepreneurship and economic development best practices. Provisions relating to the credit were enacted in 2011, but were made effective for the future tax years of 2013 through 2015. The credit was equal to 20 percent of costs incurred and the aggregate amount of credits allowed for all taxpayers was capped at \$2 million in any calendar year. The perceived goals of the Legislative Assembly in creating this credit were to allow North Dakota manufacturing businesses to remain competitive, to advance the manufacturing sector, and to foster continued production in a labor constrained environment. The credit was amended in 2015 to extend through taxable year 2017; however, the previous \$2 million annual credit cap was reduced to \$500,000 per year for calendar years 2016 and 2017. The credit also was modified to provide a method to prorate the credits among all qualified claimants if the cap is reached, and included a sunset provision indicating the tax credit was effective for the first 3 taxable years beginning after December 31, 2014. No additional legislation was passed to extend the automation tax credit in Section 57-38-01.33 prior to the expiration date.

Following the expiration of Section 57-38-01.33, provisions regarding an automation tax credit were revisited in 2019 legislation, and ultimately passed in a form substantially similar to the credit formerly available under Section 57-38-01.33. The 21<sup>st</sup> century manufacturing workforce incentive, codified at Section 57-38-01.36, provides a similar income tax credit of 20 percent of the cost of the manufacturing machinery and equipment purchased in the taxable year for purposes of automating a manufacturing process. However, distinctions exist between the automation tax credit

under the expired Section 57-38-01.33 and the automation tax credit provided in Section 57-38-01.36. These distinctions include additional taxpayer reporting requirements demonstrating improved job quality or increased productivity and a \$1 million limit on the aggregate amount of credits available in each calendar year. The credit also includes a sunset provision, indicating the credit will be available only for the first 4 taxable years beginning after December 31, 2018.

The legislative history indicates the Legislative Assembly's goals related to the continuation of an automation tax credit in the form of the 21<sup>st</sup> century manufacturing workforce incentive were consistent with the Legislative Assembly's goals when establishing the former version of the automation tax credit under Section 57-38-01.33. The Legislative Assembly emphasized the credit is to be used to incentivize improvement of job quality and increased productivity in the industry.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the number of claimants and the amounts claimed on individual and corporate income tax returns from 2006 to 2020. According to the testimony, in 2020, the total reportable income tax reduction attributable to the 21<sup>st</sup> century manufacturing workforce incentive was \$1,185,249, and the credit was claimed on 34 individual tax returns and no corporate income tax returns. The Tax Department's testimony also indicated the reportable income tax reduction attributable to carryover of unused credits under the now expired manufacturing automation credit program was \$794,672, based on claims made on 20 individual income tax returns and 2 corporate tax returns. The committee also received testimony in support of retaining the credit from representatives of the Department of Commerce, Economic Development Association of North Dakota, Greater North Dakota Chamber, and Cloverdale Foods Company.

Testimony in favor of retaining the credit indicated the total output from manufacturing in the state was \$4.16 billion in 2019, which comprised 7.28 percent of the state's economic output. Retaining the credit would provide manufacturers a tool to continue to improve efficiencies and remain competitive in the global marketplace. The credit also would continue to encourage manufacturers to be innovative in their equipment investments, including upgrading or advancing equipment to increase job quality and production capacity. The manufacturing industry also has used automation as a solution to both statewide and nationwide workforce shortage issues.

A representative of the Economic Development Association of North Dakota indicated numerous manufacturers in North Dakota have spoken to the importance of the credit. Representatives of Cloverdale Foods Company testified to the importance of the credit, and indicated over the past 5 years, Cloverdale Foods Company submitted over \$5 million of qualified automation projects through the automation tax credit program. Cloverdale Foods Company invested heavily in automation to upgrade old equipment, remain competitive, increase efficiency and output, and maintain a safe working environment. Representatives of Cloverdale Foods Company indicated the automation tax credit program is essential to the success of new categories of production and to maximize the manufacturing plant's overall capacity.

The committee reviewed a bill draft to eliminate the sunset provision on the income tax credit for purchases of manufacturing machinery and equipment for automating manufacturing processes. The bill draft would have removed the December 31, 2022, expiration date, while retaining the remainder of the statutory provisions in current law. The committee received testimony in support of the bill draft, including recommendations for expansion of the credit. The committee was informed due to proration of the aggregate maximum \$1 million credit allowance, companies only have been receiving as a credit an average of 8.8 percent of the cost of the manufacturing machinery and equipment purchased in a taxable year. A representative of the Economic Development Association of North Dakota recommended increasing the program's aggregate credit allowance to \$4 million per biennium. A representative of the Greater North Dakota Chamber recommended increasing the aggregate credit allowance to \$2.5 million per year to support the manufacturing industry. No other recommended modifications were provided to the committee. The committee did not receive testimony from interested parties in support of eliminating the credit.

The committee recognized the importance of the automation manufacturing credit, and numerous committee members expressed support for the credit. The committee also discussed potential expansion of the credit to include automated practices beyond automation for manufacturing purposes. Committee members ultimately indicated a desire to defer to a private sponsor to introduce legislation related to the credit during the next legislative session.

### **Conclusions**

The committee makes no recommendation regarding the automation manufacturing credit.

## **New or Expanding Business Exemptions**

### **Explanation of the Exemptions**

The primary economic development tool in Chapter 40-57.1 authorizes cities or counties to grant the operator of a new or expanding business a partial or complete property tax exemption or the option to make payments in lieu of taxes. Property tax exemption also may be granted for property owned by a local development organization for the purposes

of attracting new industry to the state. For purposes of the exemption, a "project" must be a revenue-producing new or expanding primary sector business. A project also may include projects in the retail sector in cities or counties with a population of less than 40,000 if the voters have provided the governing body authority to grant retail exemptions and the governing body has established criteria for granting those exemptions.

Under Chapter 40-57.1, if a project has local competitors, the project operator is required to notify competitors of the project owner's pending application for an exemption in the official newspaper of the city or county. Additional hearing and notice requirements must be met if the Department of Commerce determines the total cost of the project is estimated to exceed \$1 billion. Impacted school districts and townships are included in any exemption or payment in lieu of tax negotiations and deliberations and notice must be sent to affected counties and school districts if a city anticipates a property will receive an incentive for more than 5 years. The affected county or school district may elect to disallow the incentive from applying to its portion of the property tax for incentives granted after July 31, 2017.

A city or county may grant a partial or complete property tax exemption for up to 5 years and may extend the exemption for up to 5 additional years if the project produces or manufactures a product from agricultural commodities produced in this state or the project is situated on property leased from a government entity. The option to make payments in lieu of taxes may be extended to a project operator through the 20<sup>th</sup> year following the date the project commenced. The governing body of a city or county may revoke or reduce a property tax exemption or revoke or increase a project operator's payments in lieu of taxes if the governing body finds the project operator provided inaccurate or untrue information, used the property for purposes other than anticipated, improved the property to a greater extent than what was anticipated, or if ownership of the property changed since the incentive was approved.

A project owner also may receive an income tax exemption for up to 5 years from the date the project commenced pursuant to Section 40-57.1-04. The income tax exemption is equal to the amount of net income realized by the project, or in the case of an expansion, the net income generated by the expanded portion of the business. A project owner must submit an application for the income tax exemption to the State Board of Equalization within 1 year of commencing project operations and provide notice of the potential exemption to competitors as directed by the State Board of Equalization. For purposes of the income tax exemption, a "project" is defined as any new or expanding revenue-producing tourism or primary sector business. The Department of Commerce reviews applications to verify a project's eligibility as a primary sector or tourism business. The exemption is granted if the State Board of Equalization finds it is in the best interest of the people of North Dakota. A project is not eligible for a property or income tax exemption under Chapter 40-57.1 if it has an outstanding lien for unpaid state or local taxes, if granting the exemption would endanger existing businesses or foster unfair competition, or if the business is receiving a property tax exemption through tax increment financing. A project operator is required to provide state and property tax clearance records for exemptions granted after July 31, 2017.

### **Perceived Goals in Creating or Altering the Exemptions**

Provisions of new or expanding business property and income tax exemptions were enacted in 1969 by the passage of Senate Bill No. 39 and the creation of Chapter 40-57.1. As enacted, Chapter 40-57.1 only applied to new businesses and required a project operator to receive a property tax exemption as a condition to qualifying for an income tax exemption. A city or county also was required to apply to the State Board of Equalization for the income tax exemption on behalf of the project operator. The intent of the Legislative Assembly in creating the new business income and property tax exemption was stated clearly in the bill. Section 1 of the bill provided, in pertinent part, the purpose of the newly created chapter was:

[T]o sanction, authorize, and encourage activities in the public interest and for the welfare of the state of North Dakota, its subdivisions and people by assisting in the establishment of industrial plants and promotion of economic activities within the state, and thereby increasing production of wealth, and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.

Chapter 40-57.1 was amended in the 1970s to add notice requirements for local competitors; in the 1980s to extend the property tax exemption to revenue-producing entities and property owned by a local development corporation and restrict the property tax exemption from applying to certain large industrial projects; and in the 1990s to allow the property tax exemption to apply to the expansion and retention of existing buildings and the income tax exemption to apply to primary sector businesses and tourism businesses. Provisions also were added in the 1990s mandating a project owner to verify the owner's state and local tax liens have been satisfied as a condition to receiving the income tax exemption. Legislation enacted since 2001 allowed small cities and counties to grant the exemption to retail businesses, required enhanced notice for competitors for projects estimated to exceed \$1 billion, and required cities that anticipated granting a property tax incentive for more than 5 years to notify impacted counties and school districts and allow those taxing districts to prohibit the incentive from applying to their portion of the property tax.

## **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department regarding the number of individual and corporate income tax returns on which the income tax exemption was claimed and the estimated reduction in tax from tax years 2006 through 2016. The committee also received testimony from representatives of the Department of Commerce and Economic Development Association of North Dakota in support of retaining the exemptions.

Testimony provided in favor of retaining the exemptions indicated the exemptions help the state and localities recruit and maintain projects in the state, including major projects in the energy, agriculture, and manufacturing industries. In addition, the exemptions have been successful in assisting in the creation and expansion of businesses. Specifically, the exemptions helped a local company invest approximately \$20 million to expand its facility, which resulted in the creation of numerous jobs, ranging from entry level to management positions. The committee did not receive testimony in support of eliminating or modifying the exemptions. The committee did not identify any concerns relating to the exemptions or ways in which the exemptions could be improved.

## **Conclusions**

The committee makes no recommendation regarding the new or expanding business property and income tax exemptions.

## **Manufacturing and Recycling Equipment 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. The credit was further modified by 2017 legislation, which created a uniform definition of "primary sector business" in Title 1.

## **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 \$14,295,789 in sales tax was not collected from 260 taxpayers from fiscal years 2017 to 2021 as a result of the manufacturing sales tax exemption, and \$645,034 was not collected from 29 taxpayers as a result of the recycling sales tax exemption during the same period. The committee also received testimony from representatives of the Department of Commerce and Economic Development Association of North Dakota in support of retaining the exemption.



Testimony provided in favor of retaining the exemption indicated the manufacturing industry has a substantial impact on the supply chain, and the agricultural and energy industries rely on local manufacturing partners for the success of their operations. With the exception of Hawaii, every state has an exemption for raw manufacturing materials, and North Dakota is one of eight states that tax manufacturing equipment at any level. Maintaining this exemption is important to remain competitive with other states and will provide manufacturers a tool to continue to improve efficiencies and remain competitive in the global marketplace. The committee did not receive testimony from interested parties in support of 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.

## **Conclusions**

The committee makes no recommendation regarding the manufacturing and recycling sales tax exemption.

## **New Jobs Credit from Income Tax Withholding**

### **Explanation of the Credit**

Chapter 52-02.1 allows an employer engaged in a primary sector business to enter an agreement with Job Service North Dakota to establish training and education programs directed at new jobs within the employer's business. The agreement must specify the date the program will commence; identify program costs; and provide a guarantee by the employer for payment of program costs and an assurance any deferral of payment will not exceed 10 years from the date the program commences. The agreement also must provide an assurance that every employee participating in the program will be paid at least \$10 per hour, plus benefits, by the end of the 1<sup>st</sup> year of employment and for the life of the loan; list the maximum amount of the credit from withholding or tuition and fee payments allowed for the project; and specify on-the-job training costs for employees may not exceed 50 percent of the annual gross wages and salaries for the new jobs in the 1<sup>st</sup> full year following the date the project commences. If program costs will require financing, the loan or grant must be secured and payable from a sufficient portion of future receipts of payments authorized by the agreement. Job Service North Dakota may not enter an agreement until an employer requiring financing has qualified for financing.

Once the agreement is executed, Job Service North Dakota will notify the Tax Commissioner who must credit the income tax withholding on wages paid by the employer to each new employee participating in the program. An amount equivalent to the credited amount must be transmitted to the State Treasurer for allocation to a special fund from which payments will be made to the lender that provided the program loan or to the employer if the program costs were self-funded. Once the program costs have been satisfied, the employer's credits must cease. A new employee participating in a program will receive full credit for the amount withheld while the cost of the program is being reimbursed.

An employer that is not a primary sector business, but contracts to provide employees to a primary sector business also may qualify for program services developed and coordinated by Job Service North Dakota if the employer and the primary sector business are parties to the same Job Service North Dakota agreement and the Job Service North Dakota agreement designates the employer as the recipient of the program services.

### **Perceived Goals in Creating or Altering the Credit**

Provisions of the new jobs credit from income tax withholding were enacted through the passage of House Bill No. 1518 (1993). The perceived goal of the Legislative Assembly in creating the credit was to encourage community economic development by incentivizing businesses to locate to or expand within North Dakota by providing government-assisted new jobs training. The credit was viewed as a way to reward employers for training workers for new, skilled, and higher paying jobs and as a way for North Dakota to compete with other states for new businesses. The credit was amended in 1999 to add a reimbursement option for employers that self-financed training costs, and in 2017 to add a uniform definition of "primary sector business" to include a definition of "new wealth." The credit also was amended in 2019 to allow an employer that is not a primary sector employer to qualify for program services if the employer contracts to provide employees to a primary sector business and meets other requirements.

### **Testimony and Committee Considerations**

The committee received information from a representative of the Tax Department indicating \$2,200,958 in withholding collections was allocated to the new jobs credit program in fiscal year 2020 and \$2,162,711 was allocated in fiscal year 2021. The committee also received testimony from representatives of the Department of Commerce, Economic Development Association of North Dakota, Traill County Economic Development Commission, and Job Service North Dakota in support of retaining the credit.

Testimony in support of the credit indicated the new jobs training program is used actively across the state and is an important program for primary sector employers and area economic developers that recruit new companies to the state. The program provides employers a tool to help recruit, train, and retain employees and combat the workforce shortage in the state. For example, the credit is being used successfully by many companies in the Jamestown area, including manufacturers and value-added agricultural companies, and a farm and industrial equipment manufacturing company in Hillsboro.

A representative of Job Service North Dakota indicated over the last 2 bienniums, Job Service North Dakota entered 29 new job training program contracts, which created 852 FTE positions and generated \$2,920,675 in available training dollars that will be returned to the employers during the 10-year duration of the contract. During the current biennium, Job Service North Dakota has entered five contracts, which created 222 FTE positions and generated an additional \$941,924 in available training funds. The committee did not receive testimony from interested parties in support of eliminating or modifying the credit. The committee did not identify any concerns relating to the credit or ways in which the credit could be improved.

## Conclusions

The committee makes no recommendation regarding the new jobs credit from income tax withholding.

## PROPERTY AND INCOME TAX REFORM AND RELIEF STUDY

The Legislative Management Chairman directed the committee to study the feasibility and desirability of providing holistic tax reform and relief, focusing primarily on property tax relief and, to a lesser extent, income tax relief. The study was required to include consideration of current and projected state revenues and expenditures, the stability of state revenue sources identified as a funding source for tax relief, the intended recipients of tax relief, and potential restrictions on tax relief.

### Income Tax Reform and Relief Background

#### Individual Income Tax Rate History

The committee reviewed the history of individual income tax rates from 1919 to date. The committee was informed individual income tax rates established in 2001 for the five income brackets for each filing status were reduced by legislation enacted in 2009, 2011, 2013, and 2015. The following schedule provides information on the lowest and highest individual income tax rate for the 2007-09 biennium through the 2015-17 biennium and the percentage decrease in individual income tax rates from biennium to biennium:

Individual Income Tax Rates	Individual Income Tax Rates as a Percentage of Taxable Income				
	2007-09 Biennium	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium
Range of tax rates	2.10% to 5.54%	1.84% to 4.86%	1.51% to 3.99%	1.22% to 3.22%	1.10% to 2.90%
Percentage increase (decrease) from prior biennium		(12.3%)	(17.9%)	(19.3%)	(9.9%)

Individual income tax rates have not been altered since the 2015 legislative session. Thus, the current tax rates, as applied to each available filing status, range from a low of 1.10 to a high of 2.90 percent.

The following schedule provides information on individual income tax collections by tax year, including actual collections, and the cumulative effect of individual income tax rate reductions approved by the Legislative Assembly during the 2009-11 biennium through the 2015-17 biennium. If the Legislative Assembly had not approved any individual income tax rate reductions during the 2009-11 biennium through the 2015-17 biennium, tax collections would have been based on the 2008 tax rates in effect prior to any rate reductions.

Cumulative Effect of Individual Income Tax Rate Reductions (Based on 2008 Tax Rates) <sup>1</sup>									
	2009-11 Biennium		2011-13 Biennium		2013-15 Biennium		2015-17 Biennium		Total 2009-16
	Tax Year 2009	Tax Year 2010	Tax Year 2011	Tax Year 2012	Tax Year 2013	Tax Year 2014	Tax Year 2015	Tax Year 2016	
Actual individual income tax collections	\$291,551,674	\$379,196,662	\$377,728,193	\$534,370,310	\$408,008,964	\$464,588,152	\$341,696,065	\$297,945,510	\$3,095,085,530
Effect of the rate reductions <sup>2</sup>	\$40,890,372	\$53,182,656	\$146,881,911	\$207,793,153	\$294,179,062	\$334,973,294	\$310,981,826	\$271,163,903	\$1,660,046,177
Total individual income tax collections without the rate reductions	\$332,442,046	\$432,379,318	\$524,610,104	\$742,163,463	\$702,188,026	\$799,561,446	\$652,677,891	\$569,109,413	\$4,755,131,707

<sup>1</sup>The information for the income tax rate reductions was provided by the Tax Department and is reported by tax year rather than fiscal year because the Tax Department only calculates the information by tax year. The income tax payments and refunds can span multiple fiscal years, but the fiscal year effect is approximately the same as the preceding tax year. For example, income tax collections in fiscal year 2010 (the 1<sup>st</sup> year of the 2009-11 biennium) are an approximate reflection of the tax collections from tax year 2009.

<sup>2</sup>The amounts shown for the effect of the individual income tax rate reductions reflect the cumulative individual income tax relief provided by the Legislative Assembly based on the rate reductions approved by the Legislative Assembly in 2009, 2011, 2013, and 2015, which was a reduction of 12.3, 17.9, 19.3, and 9.9 percent, respectively.

## Individual Income Tax Deductions, Credits, and Exempt Activities

The committee reviewed the 18 individual income tax deductions and 23 individual income tax credits. The committee also reviewed individual income tax-exempt activities.

## Individual Income Tax Burden

North Dakota individual income tax collections for fiscal year 2020 were just over \$352 million. A Census Bureau per capita comparison of individual income tax collections for fiscal year 2019 ranked North Dakota 41<sup>st</sup> out of 43 states that impose individual income tax collections. Of the 43 states, 25 states had a per capita individual income tax burden at least double North Dakota's per capita individual income tax burden. In regard to the state's tax climate, North Dakota was ranked 26<sup>th</sup> out of 50 states in the individual income tax category on the Tax Foundation's *2022 State Business Tax Climate Index*, with an overall tax climate index rank of 16<sup>th</sup> out of 50 states.

## Corporate Income Tax Rate History

The committee reviewed the history of corporate income tax rates from 1919 to date. The Legislative Assembly reduced corporate income tax rates in the 2009, 2011, 2013, and 2015 legislative sessions. The following schedule provides information on the lowest and highest corporate income tax rate for the 2007-09 biennium through the 2015-17 biennium and the percentage decrease in corporate income tax rates from biennium to biennium:

Corporate Income Tax Rates	Corporate Income Tax Rates as a Percentage of Taxable Income				
	2007-09 Biennium	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium
Range of tax rates	2.60% to 6.50%	2.10% to 6.40% <sup>1</sup>	1.68% to 5.15%	1.48% to 4.53%	1.41% to 4.31%
Percentage increase (decrease) from prior biennium		N/A <sup>1</sup>	(19.5%)	(11.9%)	(4.9%)

<sup>1</sup>The 2009 Legislative Assembly reduced the number of corporate income tax brackets from five to three and reduced the tax rates in each bracket. As a result, the percentage change from the prior biennium cannot be calculated.

Corporate income tax rates have not been altered since the 2015 legislative session. Thus, the current corporate income tax rates applicable to corporations range from 1.41 to 4.31 percent.

The following schedule provides information on corporate income tax collections by tax year, including actual collections, and the cumulative effect of corporate income tax rate reductions approved by the Legislative Assembly during the 2009-11 biennium through the 2015-17 biennium. If the Legislative Assembly had not approved any corporate income tax rate reductions during the 2009-11 biennium through the 2015-17 biennium, tax collections would have been based on 2008 tax rates in effect prior to any rate reductions.

Cumulative Effect of Corporate Income Tax Rate Reductions (Based on 2008 Tax Rates) <sup>1</sup>									
	2009-11 Biennium		2011-13 Biennium		2013-15 Biennium		2015-17 Biennium		Total 2009-16
	Tax Year 2009	Tax Year 2010	Tax Year 2011	Tax Year 2012	Tax Year 2013	Tax Year 2014	Tax Year 2015	Tax Year 2016	
Actual corporate income tax collections	\$74,471,905	\$139,076,051	\$138,910,271	\$206,732,706	\$190,563,515	\$193,073,757	\$94,967,392	\$73,341,168	\$1,111,136,765
Effect of the rate reductions <sup>2</sup>	\$3,919,574	\$7,319,792	\$42,731,143	\$63,594,468	\$92,278,785	\$93,494,349	\$53,249,807	\$41,123,621	\$397,711,539
Total corporate income tax collections without the rate reductions	\$78,391,479	\$146,395,843	\$181,641,414	\$270,327,174	\$282,842,300	\$286,568,106	\$148,217,199	\$114,464,789	\$1,508,848,304

<sup>1</sup>The information for the income tax rate reductions was provided by the Tax Department and is reported by tax year rather than fiscal year because the Tax Department only calculates the information by tax year. The income tax payments and refunds can span multiple fiscal years, but the fiscal year effect is approximately the same as the preceding tax year. For example, income tax collections in fiscal year 2010 (the 1<sup>st</sup> year of the 2009-11 biennium) are an approximate reflection of the tax collections from tax year 2009.

<sup>2</sup>The amounts shown for the effect of the corporate income rate reductions reflect the cumulative corporate income tax relief provided by the Legislative Assembly based on the rate reductions approved by the Legislative Assembly in 2009, 2011, 2013, and 2015. In Senate Bill No. 2199 (2009), the Legislative Assembly reduced the number of corporate income tax brackets from five to three and reduced the corporate tax rates in each bracket. In House Bill No. 1047 (2011), the Legislative Assembly reduced corporate income tax rates by 19.5 percent. In Senate Bill No. 2156 (2013), the Legislative Assembly reduced corporate income tax rates by 11.9 percent. In Senate Bill No. 2349 (2015), the Legislative Assembly reduced the corporate income tax rates by 4.9 percent.

## **Corporate Income Tax Deductions, Additions, Credits, and Reporting Requirements and Methods**

The committee reviewed the six corporate income tax deductions, five corporate income tax additions, and 16 corporate income tax credits. The committee also reviewed corporations exempt from the corporate income tax, corporate income tax-exempt activities, information regarding combined reporting requirements for corporations, and an overview of the "water's edge" election.

## **Corporate Income Tax Burden**

North Dakota corporate income tax collections for fiscal year 2020 were just over \$91.5 million. According to the Tax Foundation, which provides a comparison of state corporate income tax rates as of January 1, 2022, North Dakota's top corporate income tax bracket rate of 4.31 percent was the fourth lowest nationally of states that impose a corporate income tax, with only North Carolina, Oklahoma, and Missouri reporting lower corporate income tax rates. In terms of the state's tax climate, North Dakota was ranked 9<sup>th</sup> out of 50 states in the corporate tax category on the Tax Foundation's *2022 State Business Tax Climate Index*, with an overall tax climate index rank of 16<sup>th</sup> out of 50 states.

## **Past Income Tax Interim Studies**

The committee reviewed past interim studies related to individual or corporate income tax, including studies conducted during the 2011-12, 2015-16, 2019-20, and 2021-22 interims.

## **Property Tax Reform and Relief Background**

### **Property Tax Overview**

Property tax is levied in every state and provides a vital source of revenue for local governments. In North Dakota, just over \$1.13 billion in property tax was levied in 2019 for payment in 2020. Property tax is levied on real property, personal property, or both, depending on the state. The tax on personal property was abolished in North Dakota in 1970. Classification and valuation marks the first step in the property tax cycle. Property is classified as either residential, commercial, agricultural, or centrally assessed. Assessors apply various calculations to the true and full value of property in each classification to arrive at a property's taxable value.

A property owner dissatisfied with the valuation of property has the right to contest the assessment to the local, county, and state boards of equalization or through the tax abatement process. Equalization is the process provided by law to adjust property assessments to be consistent with market value or agricultural value. A property owner may present evidence to the local board of equalization to argue for a reduction in the valuation of the person's property. In place of the equalization process, a property owner may elect to use a more formal abatement process in contesting a property tax assessment. Several layers of review are involved in the abatement process, which may culminate in appeal of the decision of the board of county commissioners to the district court and then to the North Dakota Supreme Court.

Once valuations are finalized following the equalization process, each taxing district prepares a preliminary budget based on anticipated expenditures for the upcoming year. The amount budgeted by a taxing district may not result in a tax levy exceeding levy limitations established by statute. The county treasurer has until December 26 to mail a property tax statement to the owner of each parcel of real property. Property statements must include the true and full value of the property; the total mill levy applied to the property; the amount of tax levied in dollars against the parcel by the county, school district, city, and township for the current year and the 2 immediately preceding taxable years; and the dollar amount of property tax savings realized by the property owner through legislative tax relief. Property taxes are due January 1 following the year of assessment and are payable without penalty until March 1 of the year in which due. The committee also reviewed information regarding payments in lieu of property tax.

### **Property Tax Statistics**

The committee reviewed information published by the Tax Department, which indicated \$1,133,974,223 in property tax was levied in 2019 for payment in 2020. This amount represents a 5 percent increase over the total amount levied for payment in 2019. Additional information published by the Tax Department indicated the majority of the property tax levied in 2019 was levied by school districts, followed by the amount of property tax levied by cities, counties, smaller miscellaneous taxing districts, and townships.

### **Traditional Controls on Growth of Property Tax Levies**

In studying the growth of property tax levies, the committee reviewed the traditional controls that serve to limit the growth of levies. These controls include state law, governing body self-restraint, and taxpayer and citizen participation. Various restricting factors are found in state law, including constitutional and statutory provisions imposing mill levy limits, voter-approval requirements, and debt limits. In addition, statutory provisions have provided for property tax relief and state assumption of program costs for some local government functions. Governing body self-restraint also serves as a traditional limiter on the growth of property tax levies. Local elected officials are presumed to act in the best interests of the political subdivision and taxpayers. Political considerations relating to being elected or reelected serve to restrain local spending to a level deemed acceptable by the majority of voters. Local elected officials also are taxpayers of the taxing district they serve and likely do not want an excessive property tax levy any more than other taxpayers. Another

limiting factor related to governing body restraint involves taxpayer and citizen participation. Taxpayers subject to property tax tend to voice their preferences to elected officials both through direct communication and by casting votes on ballot measures relating to taxation and spending.

### **Significant Property Tax Reform and Relief Legislation**

The committee undertook a broad review of property tax reform and relief legislation from 2007 through 2021.

In 2007, the Legislative Assembly provided temporary property tax relief through the income tax system through the passage of Senate Bill No. 2032. The bill provided income tax credits in the amount of a percentage of property taxes paid on a residential property occupied as a primary residence and for agricultural and commercial property owned by an individual whose primary residence was in North Dakota. The income tax relief provided \$115 million of benefit to taxpayers but the method of delivering the relief created some confusion and administrative difficulties. The relief was not extended in the 2009 legislative session.

In 2009, the Legislative Assembly provided property tax relief through the passage of Senate Bill No. 2199 by reducing school district property tax levies and appropriating \$295 million for the biennium for allocation to school districts through mill levy reduction grants.

In 2011, The Legislative Assembly provided property tax relief through the passage of House Bill No. 1047 by reducing up to 75 mills of school district levy authority and appropriating \$341,790,000 for the biennium for allocation to school districts through mill levy reduction grants.

In 2013, the Legislative Assembly provided property tax reform or relief through the passage of House Bill Nos. 1013, 1015, 1306, and 1107 and Senate Bill Nos. 2036 and 2171. House Bill No. 1013 provided a substantial expansion of state funding for elementary and secondary education, including state payment of up to 50 mills of school district property tax levies and a reduction of up to 75 mills in school district property tax levies. Senate Bill No. 2036 created a new approach to property tax relief funding by providing a state-paid credit against property taxes and mobile home taxes in the amount of 12 percent of the taxes levied by all taxing districts against the property. House Bill Nos. 1015 and 1306 and Senate Bill No. 2171 provided property tax relief through the homestead credit and disabled veterans' homestead credit in an amount estimated to exceed \$27 million for the biennium. House Bill No. 1107 provided the withholding of state aid distribution fund allocations from counties as a penalty for failure to implement soil type and soil classification data.

In 2015, the Legislative Assembly provided property tax reform or relief through the passage of House Bill Nos. 1057 and 1059 and Senate Bill Nos. 2005, 2031, 2144, 2206, and 2217. House Bill No. 1057 relocated the statutory provision mandating that property owners receive notice of certain assessment increases and notice and opportunity for taxpayers to appear if a board is considering increasing an assessment by an amount prescribed in statute. Senate Bill No. 2005 extended the 12 percent state-paid property tax credit through tax year 2016 and appropriated \$250 million for allocations of state-paid property tax relief credit funds for the biennium. House Bill No. 1059 extended the 12 percent state-paid property tax credit indefinitely, provided an equivalent credit for rural electric cooperatives, modified the transmission line per mile tax rate, and allowed certain transmission line tax payments to qualify for the state-paid property tax relief credit. Senate Bill No. 2031 provided funding for a portion of elementary and secondary education, including a 3 percent increase in the state's per-student payment in each year of the biennium and continued state funding of up to 115 mills of local property tax. Senate Bill No. 2144 combined various levies for counties, cities, townships, and other political subdivisions and repealed unnecessary or consolidated levy provisions. Senate Bill No. 2206 provided for state assumption of a significant share of county social service costs beginning in 2016 and required the 2016 county social service board budget be reduced by the amount of costs to be assumed by the state, with an allowable increase for county employee salary and benefits. Senate Bill No. 2217 required any taxing entity authorized to levy property taxes, or have property taxes levied on its behalf, to file a financial report with the city or county auditor in the year for which the levy will apply showing the ending balances of each fund or account held by the taxing entity during the preceding calendar year.

In 2017, the Legislative Assembly provided property tax reform or relief through the passage of House Bill No. 1015 and Senate Bill Nos. 2206 and 2288. House Bill No. 1015 required each county auditor to submit a report to the Tax Commissioner containing each taxing district's property valuation, property tax levy, and any other requested information and required the Tax Commissioner to use the information to prepare a statewide report of property tax increase. Senate Bill No. 2206 created a 2-year pilot program for the state-payment of county-funded economic assistance and social service costs, suspended a county's ability to levy up to 20 mills for human service purposes for taxable years 2017 and 2018, required the savings to be reflected on property tax statements, created a credit to provide comparable savings to centrally assessed companies that make payments in lieu of taxes, and repealed the 12 percent state-paid property tax credit effective for taxable years beginning after 2016. Senate Bill No. 2288 made various changes to property tax levy increase notice and public hearing provisions and assessment dates.

In 2019, the Legislative Assembly provided property tax reform or relief through the passage of House Bill Nos. 1041, 1174, and 1268 and Senate Bill Nos. 2052, 2124, and 2265. House Bill No. 1041 provided for an adjustment to the total amount of special assessment credits allowed against a property that qualified for the homestead tax credit. House Bill No. 1174 provided for the full amount of an individual's Social Security benefits to remain part of income for purposes of calculating income for the homestead property tax credit even if the benefits are excluded for purposes of calculating income tax liability. House Bill No. 1268 increased the maximum amount a county may levy for emergency medical service purposes from 10 to 15 mills. Senate Bill No. 2052 provided the board of a school district the ability to levy up to 5 mills for purposes of developing a school safety plan upon approval by a majority of the qualified electors voting on the question. Senate Bill No. 2124 provided the manner in which legislative property tax relief associated with the state takeover of social service costs must be calculated and displayed on property tax statements. Senate Bill No. 2265 phased school districts levying less than 60 mills to a uniform 60-mill deduction by 2025 for purposes of calculating state aid payments.

In 2021, the Legislative Assembly provided property tax reform or relief through the passage of House Bill No. 1157 and Senate Bill No. 2213. House Bill No. 1157 allowed a township to levy the number of mills necessary to address natural disasters or other emergency conditions upon approval of a majority of electors of the township voting on the question. Senate Bill No. 2213 increased the value to which the property tax credit for disabled veterans may be applied from the first \$6,750 of taxable valuation to the first \$8,100 of taxable valuation.

### **Past Property Tax Interim Studies**

The committee reviewed past interim studies related to property tax, including studies conducted during the 2011-12, 2013-14, 2015-16, 2017-18, 2019-20, and 2021-22 interims.

### **Testimony and Committee Considerations**

The committee reviewed information regarding current and projected state revenues and expenditures, a flowchart of state funds, and information regarding the state budget and legacy fund. The committee was informed general fund appropriations for the 2021-23 biennium total \$5.01 billion, including \$4.88 billion of ongoing funding and \$130 million of one-time funding. Estimated oil and gas tax revenues for the 2021-23 biennium total \$3.72 billion, \$1.05 billion of which represents the state funds share of oil and gas tax revenues. State revenue attributable to individual and corporate income tax for the 2021-23 biennium is \$780 million, which includes \$570 million for individual income tax and \$210 million for corporate income tax. General fund tax and fee revenues are 14 percent more than forecast during the 2021 legislative session through February 2022 and oil tax revenues are 29 percent more than forecast during the 2021 legislative session through March 2022. The committee was informed legacy fund earnings have been substantial; however, earnings are subject to volatility due to market fluctuations.

The committee received testimony from a representative of the Department of Mineral Resources regarding the oil production outlook for the state. The testimony indicated 37 drilling rigs are operating in the state, and the state produces about 1.1 million barrels of oil per day at a price in excess of \$100 per barrel. Over the next approximately 12 years, the state oil production rate is projected to increase to about 1.4 million barrels per day and plateau. An estimated 40,000 wells will be in production in 2040. Drilling inventory in the state likely will be exhausted within approximately 18 years, after which enhanced oil recovery methods will be needed to further develop oil production.

The committee was informed if the average price of a barrel of crude oil exceeds the trigger price of \$94.69 for 3 consecutive months, the oil extraction tax will increase from 5 to 6 percent until the average price drops below the trigger price for 3 consecutive months. The average price of a barrel of crude oil is based on the West Texas Intermediate oil prices. In addition, the committee was informed stripper wells are exempt from the oil extraction tax. A well located in the Bakken Formation qualifies as a stripper well when it produces less than 35 barrels of oil per day. The number of stripper wells is projected to increase in the late 2030s based on the anticipated number of producing wells and estimated daily production rate at that time.

The committee solicited testimony from a representative of the Department of Public Instruction regarding K-12 education funding and property tax. The committee was informed the cost of providing adequate K-12 education is funded by a combination of state and local taxes, with statewide taxes funding approximately 75 percent of the cost. The local share of K-12 education funding is equal to 60 mills on the taxable valuation of property in the school district and 75 percent of other local in lieu of property tax revenue. The K-12 education funding formula is student driven and uses various weighting factors to account for increased costs associated with school district size and serving students with special needs. A base per student funding rate is set by the Legislative Assembly and is designed to generate the funding necessary to educate students to state standards.

Representatives of the Tax Department provided information on a number of topics, including challenges and administrative difficulties associated with the homestead income tax credit and commercial property income tax credit contained in Senate Bill No. 2032 (2007). The committee was informed the program established by the bill posed

administrative difficulties, including challenges associated with intermingling tax types administered at different levels of government, verification of parcel level data, communication, identifying property owners not subject to state income tax filing requirements, and the certificate program. The department noted a significant portion of the \$1.1 million appropriated to the department to administer the program was expended on information technology programming to allow counties to upload county parcel information to the department's system so claimed credits could be verified. In addition, counties incurred costs and loss of time related to processing the certificates issued through the program. The department suggested tax relief in a fixed amount without intermingling tax types likely would be easier for the department to administer and more transparent to the public.

The committee received information from a representative of the Tax Department regarding individual and corporate income taxes paid based on income level and individual and corporate income tax deductions and credits claimed by taxpayers. The committee reviewed individual income tax data relating to the number of returns, total net tax liability, average net tax liability, and the effect of the tax relief credit provided in House Bill No. 1515 (2021) for various income levels based on federal adjusted gross income for tax years 2019 through 2021. The committee reviewed corporate income tax data relating to the number of returns, total net tax liability, and average net tax liability for various income levels based on North Dakota taxable income for tax years 2019 through 2021. The committee also received data related to individual and corporate income tax credits, including the number of returns and credit amount for each individual and corporate income tax credit for tax years 2019 through 2021. The individual and corporate income tax deduction data provided to the committee included the number of returns, deduction amount, and estimated tax reduction attributable to each individual and corporate income tax deduction for tax years 2019 through 2021. The department noted the 2021 individual tax year data and the 2020 and 2021 corporate income tax data are incomplete.

The committee also received information from the Tax Department related to the status of the income tax credit authorized in House Bill No. 1515, including an overview of the qualification criteria, the estimated fiscal impact, and a comparison of the estimated credits to the actual credits awarded to date. Committee members were informed the income tax credit is estimated to reduce income tax collections by \$211 million for the 2021-23 biennium, including \$104 million in fiscal year 2022 and \$107 million in fiscal year 2023. The department received 405,990 returns as of June 13, 2022. Of these returns, 266,947 were eligible for a full or partial credit and \$101.5 million of credits have been claimed.

A representative of the North Dakota Association of Counties provided information regarding the calculation of property tax. The committee received an overview of the valuation process for locally assessed property, centrally assessed property, rural electric cooperatives, and telecommunications companies. The committee was informed of the budget preparation process, including the county budget cycle timeline, political subdivision budget worksheets, calculation of mill rates, and maximum levy worksheets.

The committee reviewed the significant dates and deadlines associated with the property tax cycle and the contents of the notice of estimated property tax and the tax statement. The committee discussed the feasibility of including special assessment information on the notice of estimated property tax required under Section 57-15-02.2. The committee received information from a city auditor, a representative of the North Dakota League of Cities, and the North Dakota Association of Counties regarding the issue. The committee was informed moving any of the deadlines associated with special assessments would pose significant challenges for city and county auditors and others involved with the special assessment process. The committee was informed, from a process standpoint, special assessment installments paid in the previous taxable year would be relatively easy to include on the notice. However, the committee was cautioned this practice may result in confusion for taxpayers due to potential discrepancies between the previous year's special assessment installment paid and the special assessment installment amount due in the current year.

The committee received information regarding proposed property tax relief legislation anticipated to be introduced during the next legislative session. The proposed legislation would include lowering the local contribution under the K-12 school funding formula from the current 60-mill requirement to 30 mills applied to the school district's 2022 taxable value and would lock in taxable valuations at the school district's 2022 value for the biennium for purposes of calculating the local contribution under the formula. The proposed legislation also would require school boards to discuss budgets in dollar amounts rather than number of mills to encourage transparency and prudent spending. The relief program would be funded by legacy fund earnings. Some committee members expressed support for the proposed legislation, noting benefits of concentrating on property tax relief through school funding. Other committee members expressed concern regarding the potential cost of the relief and the potential for political subdivisions to increase property taxes to backfill the relief provided through the proposed legislation.

The committee received testimony regarding a second item of proposed tax relief legislation anticipated to be introduced during the next legislative session. The proposed legislation would provide for a refundable income tax credit in the amount of 10 percent of property taxes paid on a taxpayer's primary residence. Some committee members questioned whether the proposal was a redistribution of tax dollars rather than tax relief. Other committee members

expressed concerns related to the restrictions contained in Section 18 of Article X of the Constitution of North Dakota, commonly referred to as the "gift clause," and the potential for political subdivisions to backfill the relief provided to taxpayers through the income tax credit. Another committee member noted the plan would provide a modest percentage of property taxes paid directly to taxpayers.

The Governor and Tax Commissioner provided information regarding proposed income tax relief legislation, which they anticipated would be introduced during the next legislative session. The proposed legislation would create the lowest flat income tax in the nation at 1.5 percent. Under the plan, the first \$54,725 of income for an individual and the first \$95,600 of income for a married couple filing jointly, including the federal standard deduction, would be at a zero tax rate. The committee was informed the plan would provide every North Dakota income taxpayer an income tax benefit and income tax liability would be eliminated for nearly 60 percent of North Dakota taxpayers. The committee also was informed the state budgetary environment would support passage of the plan from a fiscal standpoint.

Committee members expressed opposing viewpoints regarding whether to pursue property or income tax relief. Some committee members expressed support of income tax relief, noting it would ensure tax relief is provided directly to taxpayers, help attract and retain workforce, improve the state business climate, and provide tax relief while ensuring property taxes are controlled at the local level. Conversely, committee members favoring property tax relief noted constituents have identified property tax as a more significant concern than state income tax. Committee members discussed the importance of determining the dollar amount of property tax relief and source of revenue before determining what type of tax relief to provide.

### **Conclusions**

The committee makes no recommendations in regard to its study of the feasibility and desirability of providing holistic tax reform and relief, focusing primarily on property tax relief and, to a lesser extent, income tax relief.

## **REPORTS RECEIVED BY THE COMMITTEE**

### **Property Tax Increase Report**

The committee was assigned the responsibility to receive an annual report from the Tax Department on 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 2021 and 2022 reports contain the top 50 changes in taxes levied, including information related to school district levies, city park levies, citywide levies, and countywide levies. The 2022 report indicates the average ad valorem tax percentage change from 2020 to 2021 was 2.79 percent for counties, 5.99 percent for cities, and 4.64 percent for school districts.

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. Testimony indicated the report is a continued effort to provide transparency in the budget process.

### **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 2020 report on renaissance zone progress, 1,926 projects have been approved and 1,498 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2020 indicated renaissance zones created 11 new businesses, 8 business expansions, and 38 new jobs. The benefits realized by the 77 projects that reached completion in 2020 amounted to \$2,021,308 in income tax exemptions and \$3,090,887 in property tax exemptions. According to the 2021 report on renaissance zone progress, 1,976 projects have been approved and 1,554 projects have been completed since the inception of the renaissance zone program. A survey of renaissance zone communities conducted in 2021 indicated renaissance zones created 20 new businesses, 13 business expansions, and 211 new jobs. The benefits realized by the 50 projects that reached completion in 2021 amounted to \$2,557,405 in income tax exemptions and \$8,552,426 in property tax exemptions. Testimony indicated the renaissance zone program is functioning as intended.

### **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 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 2020 report indicated from 2016 through 2020, 865 business incentive agreements were entered into the database, totaling an incentive value of \$124,835,930. The report also indicated over the last 5 years, 4,113.5 jobs were created and retained compared to a goal of 1,990.5 jobs, and 81 percent of business incentives met their goals within 2 years from the benefit date. The 2021 report indicated from 2017 through 2021, 841 business incentive agreements were entered into the database, totaling an incentive value of \$172,619,977. The report also indicated over the last 5 years, 3,400.5 jobs were created and retained compared to a goal of 1,466 jobs, and 76 percent of business incentives met their goals within 2 years from the benefit date.

# TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23 established the Tribal and State Relations Committee. The committee consists of a chairman designated by the Chairman of the Legislative Management; three members of the House of Representatives, two of whom are selected by the House Majority Leader and one of whom is selected by the House Minority Leader; and three members of the Senate, two of whom are selected by the Senate Majority Leader and one of whom is selected by the Senate Minority Leader.

Section 54-35-23 directs the committee to conduct joint meetings with the North Dakota Tribal Governments' Task Force to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. The committee must meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Management.

The North Dakota Tribal Governments' Task Force is composed of six members, including the Executive Director of the Indian Affairs Commission, or the Executive 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.

House Bill No. 1015 (2017) suspended Section 54-35-23 through July 31, 2019, and established the Tribal Taxation Issues Committee. The Tribal Taxation Issues Committee consisted of 10 members--the Governor, who was designated by the Legislative Management to serve as Chairman, the Lieutenant Governor, the Tax Commissioner, the Executive Director of the Indian Affairs Commission, the Majority and Minority Leaders of the House and the Senate, and the Chairmen of the Finance and Taxation Standing Committees of the House and the Senate. The nonlegislative committee members served as nonvoting members, and the Chairman of the committee was required to invite tribal chairmen to each committee meeting. Senate Bill No. 2312 (2019) extended the suspension of Section 54-35-23 through July 31, 2021, and again established the Tribal Taxation Issues Committee with the same membership as the previous interim.

The Legislative Management delegated to the Tribal and State Relations 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 Section 27-20.4-27.
- The Governor describing the terms and negotiations of any oil and gas agreements entered under Chapter 57-51.2 and a biennial report thereafter describing the agreement's implementation and any difficulties in its implementation, pursuant to Section 57-51.2-04.

Committee members were Senators Rich Wardner (Chairman), Jessica Bell, Joan Heckaman, and Dave Oehlke and Representatives Joshua A. Boschee, Terry B. Jones, and Chet Pollert.

## FEDERAL INDIAN LAW AND POLICY

Indian law is a complex area of law. Due to the sovereign nature 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 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 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 a tribal 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 reservation boundaries, 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 revenue sharing agreements between the state and tribal nations within the state.

Tribe	Effective Date	Tax Type	Current Revenue Allocation		Administrative Fee
			Tribe	State	
Standing Rock Sioux Tribe	July 1, 1993	Cigarette and other tobacco products	87%	13%	1%
Standing Rock Sioux Tribe	January 1, 1999	Motor fuel and special fuel	87%	13%	1%
Spirit Lake Tribe	September 1, 2006	Motor fuel and special fuel	76%	24%	1%
Three Affiliated Tribes of the Fort Berthold Reservation	September 1, 2007	Motor fuel and special fuel	70%	30%	1%
Three Affiliated Tribes of the Fort Berthold Reservation	July 1, 2008	Oil and gas			None
		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%

## 2021 LEGISLATION

The committee reviewed recent legislation including:

- House Bill No. 1052, which authorized juvenile services agreements between the Department of Corrections and Rehabilitation, the Supreme Court, and the Indian Affairs Commission and tribal governments.

- House Bill No. 1101, which authorized the Director of the Department of Transportation to enter agreements with tribal governments regarding federally funded safety improvement projects on tribally owned highways, streets, roads, and bridges.
- House Bill No. 1126, which clarified tribal police officers may provide emergency services or mutual aid to a state or political subdivision law enforcement officer without being licensed in that jurisdiction.
- House Bill No. 1407, which revised the medical assistance tribal health care coordination agreement program, increasing from 60 to 80 percent the amount of excess federal medical assistance funding the Department of Human Services shall deposit in the tribal health care coordination fund, revising the authorized uses for which a tribe may use the tribal share of the excess funds, directing a tribe that receives funds under the program to report to the Legislative Management, and repealing the program if by December 31, 2022, no tribe has used the program.
- Senate Bill No. 2304, which required elementary and middle schools to provide instruction in North Dakota studies with an emphasis on the federally recognized Indian tribes in the state, requires high schools to provide instruction in Native American tribal history, and adds Native American tribal history to the high school graduation requirement effective August 1, 2025.
- Senate Bill No. 2319, which provided for the distribution of oil and gas tax revenue from straddle wells. For wells drilled before July 1, 2019, a tribe receives 50 percent of the straddle well tax revenue multiplied by the associated spacing unit acreage located within the reservation boundaries. For wells drilled on or after July 1, 2019, the tribe receives 80 percent of the straddle well tax revenue multiplied by the associated trust land spacing unit acreage located within the reservation boundaries and 20 percent of the straddle well tax revenue multiplied by the associated nontrust land spacing unit acreage located within the reservation boundaries. The bill applies to oil and gas tax revenue collections allocated by the State Treasurer after September 1, 2021.

## **GAMING CONCERNS**

The committee received testimony from tribal representatives regarding the impact on tribal gaming due to the expansion of charitable gaming in the state and the lack of adequate state oversight and regulation. According to the testimony, tribal economies rely heavily on gaming revenue, and tribal casinos have been negatively impacted by the proliferation of electronic pull-tab devices. Tribal representatives noted tribal casinos are subjected to a high level of regulation compared to the state's limited regulatory oversight of electronic pull-tab devices.

The committee received testimony from a representative of the Attorney General's office indicating electronic pull-tab device activity accounts for 86 percent of the charitable gaming activity in the state and accounted for over \$1.7 billion in gross proceeds for fiscal year 2022. According to the testimony, over 250 charitable organizations operate over 4,200 electronic pull-tab devices at over 700 sites in over 275 cities across the state. Testimony indicated the federal government has imposed certain reporting requirements for tribal casinos, but those federal reporting requirements do not apply to charitable gaming. Testimony also indicated the Attorney General's office was allotted an additional seven full-time employees by the 2019 Legislative Assembly to assist with regulation and oversight, but workforce shortages have made filling the open positions difficult.

The committee received testimony from a representative of the Spirit Lake Tribe indicating tribal casino revenue decreased by 45 percent the first year after electronic pull-tab devices were implemented. According to the testimony, the lack of adequate auditing by the state has resulted in little regulatory oversight over the growing number of gaming devices, and the unregulated use of these devices can result in money laundering and criminal exploitation. Testimony also indicated tribal casinos are heavily regulated and have procedures to help identify and deter criminal activity.

Some committee members expressed concerns regarding the expansion of electronic pull-tab devices and the desire to impose more regulations and limitations.

## **EDUCATION**

### **Kindergarten Through Grade Twelve Education**

The committee received testimony from a representative of the Department of Public Instruction regarding Native American educational programs, opportunities, and partnerships. According to the testimony, the Office of Indian/Multicultural Education was created within the department to address the needs of Native American students. Approximately 13,000 Native American, American Indian, or Alaskan Native students are enrolled in the state's kindergarten through grade twelve school system, equating to nearly 10 percent of student enrollment, and the high school graduation rate for Native American students has increased from 52 percent in 2012 to 78 percent in 2021.

The committee received testimony from a representative of the Three Affiliated Tribes regarding the implementation of Senate Bill No. 2304 (2021), which requires elementary and secondary schools in the state to provide curriculum on Native American history. According to the testimony, a working group, including tribal leaders and historians, state entities, and other interested parties, was established to provide teachers with resources to incorporate Native American history into the curriculum.

### **Tribal Community Colleges**

The committee received testimony from representatives of each of the state's tribal community colleges. Testimony indicated the colleges have numerous degree programs and certificates available to students, and the majority of enrolled students are Native American. Testimony from representatives of the Turtle Mountain Community College and Sitting Bull College indicated the colleges are exploring working with the United States Department of Agriculture to obtain resources for capital construction projects.

### **North Dakota Indian Scholarship**

The committee received testimony from a representative of the North Dakota University System regarding the North Dakota Indian Scholarship. According to the testimony, the scholarship provides funds to approximately 270 students each year, and the scholarship also is available for students enrolled in tribal colleges in the state. The scholarship fund has not been increased since state agencies were required to cut budgets after 2016. The scholarship amount is limited to \$2,000 per student, but the amount awarded per student has been reduced to accommodate a larger number of qualifying students.

## **TAXATION ISSUES**

The committee received testimony from a representative of the Tax Department regarding other states' tax revenue sharing agreements with tribal nations. 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.

### **Alcohol Tax**

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 concerns with the framework for a state-tribal alcohol tax agreement are the tax revenue allocation formula is not equitable to tribes and the regulation resides with the state rather than jointly between the state and the tribe. Tribal representatives asserted the tax 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 asserted the failure to allow joint regulation of alcohol sales within reservation boundaries is an erosion of the tribe's sovereignty and its authority under federal law to tax nontribal members within reservation boundaries.

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians and Spirit Lake Tribe indicating their respective tribes may be interested in entering a state-tribal tax agreement if more favorable terms are negotiated. According to the testimony, obtaining community support for the Turtle Mountain Band of Chippewa Indians to enter a state-tribal tax agreement may be difficult due to a general distrust of state and tribal politics among the tribal population.

The committee received testimony from representatives of the Three Affiliated Tribes noting there is a misunderstanding between the tribe and alcohol wholesalers regarding the interpretation of a tribal ordinance that the alcohol wholesalers believe creates a risk of being subject to tribal court jurisdiction. According to the testimony, the tribe has interpreted the ordinance does not apply to alcohol, but the wholesalers continue to express concern.

### **Motor Fuels and Bulk Sales**

The committee received testimony from representatives of the Spirit Lake Tribe indicating the tribe is interested in renegotiating the tax revenue split for the motor and special fuels tax because the tribe needs additional revenue to make improvements to roads and the establishments that sell fuel.

The committee received testimony from representatives of the Three Affiliated Tribes noting the current motor vehicle fuel tax agreement does not contemplate bulk fuel sales, and the tribe would like those sales to be included because many vendors purchase fuel in bulk.

## **Online Sales Tax**

The committee received testimony from representatives of the Standing Rock Sioux Tribe indicating the tribe may be interested in negotiating a state-tribal sales and use tax agreement to capture the tax revenue generated from online sales from tribal members on the reservation.

Testimony from a representative of the Tax Department indicated items generally are taxed where the item is delivered or where the customer takes possession, there is a 5 percent state sales tax, and there are no state-tribal tax agreements for sales tax. Testimony indicated although legislation was enacted in 2019 to allow for state-tribal sale and use tax agreements, if the tribe wants to make changes to the legislation, the changes could be addressed during the upcoming legislative session.

## **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 severe shortage of law enforcement officers. Testimony from a representative of the Turtle Mountain Band of Chippewa Indians indicated only 6 to 12 law enforcement officers patrol the entire reservation. Testimony from a representative of the Standing Rock Sioux Tribe indicated the tribe has only 15 police officers for approximately 10,000 tribal members, and the maximum capacity of tribal detention facilities is 48 inmates, which is inadequate and forces the tribe to contract with out-of-state or federal facilities straining the tribe's law enforcement budget. Testimony indicated tribes are seeking to deter criminal activity by entering mutual aid agreements and memorandums of understanding with different state law enforcement agencies, including the Highway Patrol. Testimony from a representative of the Bureau of Criminal Investigation indicated the appropriation request from the Attorney General's office for the upcoming biennium will include the cost of hiring three full-time employees to be assigned to offices in Stanley, Rolla, and Carson to help combat the drug activity near tribal communities.

Committee members acknowledged the drug problem crosses reservation boundaries and is rampant throughout the entire state and encouraged tribal representatives to continue forming partnerships with state law enforcement agencies.

## **HEALTH CARE ISSUES**

The committee received information regarding tribal health care coordination agreements. Testimony from a representative of the Department of Human Services indicated care coordination agreements are between a tribe and a health care provider, and both the state and tribes can benefit if tribes enter the agreements. If a care coordination agreement is in place, the federal government will reimburse the state for 100 percent of the cost of care of tribal members enrolled in Medicaid. A portion of the reimbursement will go to the tribe that entered the agreement, and a portion will go to the state's general fund. The statute on care coordination agreements, Section 50-24.1-40, was amended by House Bill No. 1407 (2021) and there are stipulations on how a tribe may use the funding it receives as a result of entering a care coordination agreement. The funding a tribe receives must be used to increase access to health care, and there is a cap on the amount of funding that can be used for capital construction.

The committee received testimony from representatives of the Three Affiliated Tribes indicating the tribe pays over \$40 million per year to provide health insurance for qualifying tribal members, and 7,000 members are enrolled. Testimony indicated the tribe pays the health care insurance premiums for members who are otherwise eligible for Medicaid because tribal elders face barriers when attempting to enroll in Medicaid, such as poor customer service from county social services. Testimony indicated the federal government has failed to provide sufficient outreach to tribal members regarding Medicaid and Medicare eligibility and enrollment.

The committee received testimony from representatives of the Standing Rock Sioux Tribe indicating a new health care facility is necessary to meet the community's needs due to the impact of the pandemic which highlighted the chronic underfunding of the Indian Health Service and the health care disparities faced by tribal members.

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicating retaining professional medical staff on the reservation is difficult due to the remote nature of the reservation, and there is a severe shortage of licensed addiction counselors and dentists to serve the tribal community.

The committee received testimony from a representative of the State Department of Health, noting the department hired four tribal health liaisons to help transmit information from the department to the tribes and identify gaps in services. The positions initially were created as a pilot program funded by COVID-19 relief funding, but the department recently applied for a grant to fund the positions until 2027.

## **OTHER ISSUES AFFECTING TRIBES**

### **Indian Boarding Schools and Burial Sites**

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians noting concerns that tribal members may be buried on Indian boarding schools' land. Tribal representatives requested support for requesting pertinent records from the State Historical Society and to bring those individuals back to their families for appropriate ceremonies and proper burials.

The committee received testimony from representatives of the State Historical Society regarding available resources concerning Indian boarding schools. Testimony indicated the State Historical Society routinely works with well-known tribal historians and specialists on the reservations.

### **State-Tribal Relations Policy**

The committee received testimony from representatives of the Three Affiliated Tribes proposing formalizing a state-tribal relations policy in statute to improve communication between the state and tribes and to ensure timely and meaningful consultation and tribal input occurs. Testimony indicated other states, including Montana, Nevada, and Washington, have enacted laws outlining formal state-tribal relations policies.

### **Legislative Redistricting and Tribal Census Data**

The committee received testimony from tribal representatives on legislative redistricting and tribal census data. Testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicated tribal membership data is more accurate than census data because the census collection was affected by the pandemic as well as tribal members' mistrust of the federal and state governments due to historical trauma. Testimony from representatives of the Three Affiliated Tribes indicated support for the reservation to be a single legislative district or to create legislative subdistricts to ensure tribal members are fairly represented. Testimony from representatives of the Spirit Lake Tribe indicated support for the reservation to be a single legislative district due to the reservation's small size and unique geography, and the majority of tribal land being located in one county.

Committee members indicated the committee would report the tribal feedback received relating to legislative redistricting to the Legislative Management's interim Redistricting Committee and encouraged tribal members to attend the Redistricting Committee's public hearings.

## **REPORTS**

### **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 Section 27-20.4-27. Section 27-20.4-27 allows 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 services 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 initially was signed between the Spirit Lake Tribal Court and relevant state entities on January 15, 2020, and a second memorandum of understanding was signed by the Turtle Mountain Band of Chippewa Indians. The memorandums of understanding facilitate the sharing of information, data collection, and resources between the participating entities. Twenty-one juvenile cases in the Spirit Lake Tribal Court have received services.

### **Oil and Gas Agreements**

Section 57-51.2-04 requires the Governor to file a report with the Legislative Management describing the negotiations and terms of any separate agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Reservation, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation, that portion of the Standing Rock Reservation located in this state, or Turtle Mountain Band of Chippewa Indians Reservation and on trust properties outside reservation boundaries and thereafter biennial reports describing the agreement's implementation and any difficulties in its implementation.

The committee did not receive a report on this topic because no new oil and gas agreements were entered or implemented under Chapter 57-51.2 during the reporting period.

# **WATER DRAINAGE COMMITTEE**

Pursuant to North Dakota Century Code Section 54-35-02, the Legislative Management created the Water Drainage Committee and directed the committee to:

- Study and propose amendments to Chapters 61-16.1, 61-21, and 61-32 to eliminate redundancy and conflicts and to provide for uniform assessment procedures for all water projects;
- Study and recommend procedures to appeal water resource board decisions;
- Study the structural relationship between the State Water Commission and water resource boards and identify methods for improving water resource board accountability; and
- Study methods, including the use of an independent organization, for assessing the cost of a project in relation to the benefits received and recommend a method to ensure the cost to a landowner does not exceed the benefit to the landowner.

Senate Bill No. 2208 (2021) provided for an optional study of more than 16 significant, water-related topics. The Legislative Management voted to revise the study to make it more manageable and to avoid duplication of efforts undertaken by the Water Topics Overview Committee. The revision provided for the 4 study topics listed above to be studied by the Water Drainage Committee.

The committee members include three Senators, three Representatives, and the following five citizen members:

- A member of the State Water Commission appointed by the Governor;
- A county road engineer appointed by the executive committee of the North Dakota Association of Counties;
- A county commissioner appointed by the executive committee of the North Dakota Association of Counties;
- A water resource board member appointed by the North Dakota Water Resource Districts Association; and
- A representative of agriculture producers appointed by the Agriculture Commissioner.

Committee members were Senators Larry Luick (Chairman), Kathy Hogan, and Ronald Sorvaag; Representatives Dennis Johnson, David Monson, and Marvin E. Nelson; and citizen members Jeff Frith, Clif Issendorf, Richard Johnson, Sharon Lipsh, and Randy Melvin.

## **UNIFORM ASSESSMENT PROCEDURE FOR ALL WATER PROJECTS**

### **Background**

The Legislative Assembly has enacted legislation regulating drainage, water resource boards and their predecessors, and assessment projects for many decades. In 1955, the Legislative Assembly passed Senate Bill No. 33, which authorized boards of county commissioners to appoint drain boards and levy up to one-tenth of one mill on all taxable real and personal property in the county for the operation of the drain board. Each drain board was required to report annually to its board of county commissioners but otherwise had broad authority to regulate in the county.

Provisions in Senate Bill No. 33 were codified in Chapter 61-21, which governs assessment drains. Many of the assessment drain procedures in that bill are similar to the ones in effect today. A drain board could receive petitions from landowners to construct a drain, hold a public meeting on the drain, and, if the drain was approved by the voting landowners, issue a notice of order to establish the drain. A person whose land would be assessed for an approved drain could appeal the drain board decision to a district court. The drain board also would assess properties "in accordance with the benefits received" from the drain. Public hearings were held on the proposed assessments, and a person subject to an assessment could appeal the assessment to the State Engineer.

Senate Bill No. 33 also authorized drain boards to construct bridges and culverts over or in connection to drains as the boards deemed necessary. The bill also had a provision allowing drain boards from multiple counties or states to work together on drains crossing multiple jurisdictions. Other sections of the bill addressed regulation of lateral drains, collection of taxes and assessments, responsibility for keeping drains open and in good repair, reassessment of benefits, warrants, liens, bonds, penalties for violations, and other drainage-related topics.

In 1957, House Bill No. 579 was passed to require permits for certain drains of ponds, sloughs, lakes, or a series of those water bodies which drained 80 acres or more. The authority to grant permits largely was delegated to the State Water Conservation Commission and later to the State Engineer, who was required to refer the applications to the board of commissioners of the relevant water management district with final approval.



In 1981, the Legislative Assembly passed House Bill No. 1077, creating Chapter 61-16.1, which established water resource districts. The bill arose from recommendations of the 1979-80 interim Natural Resources Committee. The legislation combined drain boards and water management districts into the new water resource districts, which were given authority over drain permitting and assessment projects. Many provisions were similar to those codified in Chapter 61-21 by earlier legislation. However, much of Chapter 61-21 regarding assessment drains was not repealed. Instead, references to water management districts in parts of Chapter 61-21 were changed to references to water resource districts.

Although some provisions in Chapter 61-16 regarding water management districts were repealed, others were amended to replace "water management district" with "water resource district." Water resource district authority and regulations were codified in Chapters 61-16, 61-16.1, and 61-21. All three chapters have been amended multiple times, including recent amendments to Chapter 61-32 regarding the process and requirements for subsurface drainage systems.

### **Testimony and Committee Discussion**

The committee reviewed information regarding conflicts and redundancies in Chapters 61-16.1 and 61-21. The committee received testimony from a representative of the State Water Commission indicating Chapter 61-16.1, 61-21, and possibly 61-32 should be combined to remove confusion and redundancy throughout those chapters. The State Water Commission recommendations were based on a review of the status of water drainage with stakeholders, including water resource boards, individual resource board members, legislators, attorneys, engineers, State Water Commission staff members, and the North Dakota Water Resource District Association.

Testimony indicated a need for clarification of the assessment process. The committee discussed several conflicts and redundancies regarding the procedures for assessment drains, posting of bonds from petitioners, publication to landowners, contents of notices, notice of public hearings, investigations of obstructions to drains, and appeals. Discussion also indicated a need for updated definitions.

The committee received testimony from representatives of the Department of Water Resources, the Attorney General's office, the North Dakota Water Resource Districts Association, and the State Water Commission outlining concerns and proposed changes.

Committee members expressed a desire to merge Chapters 61-16.1 and 61-21 regarding the authority of water resource boards and assessment projects for water drainage. The committee agreed to streamline statutory language and amend related statutes to provide clarification to landowners and water resource boards. The committee agreed water resource boards are divided in their understanding and interpretation of laws relating to water drainage assessment projects. The committee considered a bill draft that would incorporate the recommendations received by the committee and unify and clarify the procedure for assessment projects relating to water management and water resource boards throughout the state.

### **Recommendation**

The committee recommends bill draft [\[23.0024.03000\]](#) to address conflicts and redundancies between Chapters 61-16.1 and 61-21 by enacting new sections to Chapter 61-16.1, relating to water resource boards; amending multiple sections relating to water resource boards and procedures for assessment projects undertaken by water resource boards; and repealing Chapter 61-21, relating to water resource districts, water resource boards, assessment procedures and requirements, and drains.

## **PROCEDURES FOR APPEALS OF WATER RESOURCE BOARD DECISIONS**

### **Background**

Water drainage and assessment projects are codified under Chapters 61-16.1, 61-21, and 61-32. Each chapter contains procedures for appeals regarding the decisions of the water resource district.

### **Testimony and Committee Discussion**

The committee received testimony from a representative of the Department of Water Resources regarding appeal procedures from decisions of the water resource boards. Testimony indicated several issues regarding conflicts between procedures for appeals between district courts and the Department of Water Resources dependent on the type of issues being decided and the chapter governing the appeal.

The committee discussed the possibility of providing a uniform procedure for appeals. Currently, the Department of Water Resources has limited statutory authority to hear appeals. The Department of Water Resources will hear an appeal regarding a board's final project, assessment list, design, and location. The Department of Water Resources also will hear appeals on noncompliance drains and noncomplaint dams, dikes, or other devices. The district court may hear

appeals from any order or decision of the water resource board, as well as decisions regarding the obstruction or removal of a drain.

The committee received testimony regarding the Department of Water Resources available resources and the department's current and potential roles in drainage management. Testimony indicated the Department of Water Resources should be the last resort in the appeals process, suggesting most drainage issues should be handled at the local level.

The committee further discussed holding county commissioners and state's attorneys accountable for handling the technical aspects of appeals regarding water law.

The committee received testimony noting procedural conflicts between appeals regarding water resource board decisions and issues relating to landowner notice. The committee expressed concern regarding deadlines relating to landowner appeals to the Department of Water Resources. The committee agreed deadlines should be extended to afford water resources boards additional time to notify landowners of the final assessment list and provide landowners adequate time to file an appeal after the decision is made by the board.

The committee considered a bill draft that would provide alternatives to appeals by including mediation for landowners adversely affected by the decision of the water resource board and modifying the timelines relating to water resource board notices and landowner appeals. The bill draft would extend the deadline for a landowner to appeal a decision of the water resource board from 10 days after the meeting at which the water resource board approves the final assessment list to 20 days after the date of the meeting to provide landowners additional time to review the final assessment list.

### **Recommendation**

The committee recommends a bill draft [\[23.0024.03000\]](#) to provide alternatives to appeals for landowners adversely affected by water resource board decisions and to modify the timelines relating to water resource board notices and landowner appeals.

## **RELATIONSHIP BETWEEN THE STATE WATER COMMISSION AND WATER RESOURCE BOARDS**

### **Background**

Water resource districts and water resource boards were created in 1981 to conserve and protect water resources within the watersheds of North Dakota by managing projects, including assessment drains, dams and dikes, and flood control on a local level.

At the state level, the State Water Commission planned and constructed dams, made water facility projects available to the public, and developed statewide plans for future resources development. Through legislation enacted in 1983, the agency became known as the State Water Commission.

In 2021, the State Water Commission was converted into the Department of Water Resources through legislative action. The Department of Water Resources was given the authority to investigate, plan, construct, and develop water-related projects, and serves as a mechanism to financially support those efforts throughout the state. The Department of Water Resources consists of seven divisions: Administration, Atmospheric Resources, Planning and Education, Regulatory, State Engineer, Water Appropriation, and Water Development.

### **Testimony and Committee Discussion**

The committee received testimony from a representative of the Department of Water Resources, regarding the functional relationship between the State Water Commission and water resource boards. The primary relationship between the State Water Commission and water resources boards relates to state funding, whereby the State Water Commission provides funding to water resource boards through cost-share assistance.

The committee received testimony regarding the relationship between the State Engineer's office and water resource districts. The State Engineer provides oversight to water resource districts. The State Engineer reviews water-related complaints from the local level regarding drainage, dams or dikes, and obstructions. The State Engineer reviews appeals of water resource district decisions and regulates permitting for surface drainage, dams, dikes, and flood control.

The committee received testimony relating to water resource board members and local accountability. Accountability at the local level rests with the county commissioners, rather than with state agencies. The state is involved with appeals of water resource district decisions; however, the state does not have the authority to choose water resource board members.

The State Engineer's limited oversight authority provides an administrative remedy regarding water resource district decisions. The committee received testimony noting the variation in statutory provisions relating to appeals. Testimony indicated some statutes require appeals to be filed with the state as a prerequisite to filing an appeal to a district court. Other statutory provisions require decisions be appealed directly to a district court. Appeals filed with the State Engineer include assessment appeals regarding appeal of no benefit, petition to appeal assessments, and design appeals. Additionally, the State Engineer will hear complaint appeals regarding drainage, dams, and dikes. These statutes are found under Chapters 61-16.1, 61-21, and 61-32.

The committee received testimony from a representative of Griggs County relating to oversight concerns between county commissioners and water resource boards. County commissioners cannot serve on a water resource board. The committee heard testimony relating to concerns with county commissioners not involving themselves in issues relating to water management.

The committee received testimony recommending at least one county commissioner be appointed to each water resource board to improve communication between the two bodies and motivate county commissioners to take a hands-on approach to water resource board oversight.

The committee discussed reasons why county commissioners should not be allowed on water resource boards and the roles and responsibilities of the state's attorney. The committee discussed the differences between eastern and western North Dakota and policies that could apply statewide.

The committee received testimony recommending the chapters of the Century Code pertaining to water resource boards be rewritten and streamlined to minimize problems regarding oversight.

The committee discussed mandating water management education for county commissioners and holding county commissioners responsible for reviewing the decisions made by their local water resource board. Ultimately, the committee agreed not to amend the laws relating to appeals because the change would place too large of a burden on county commissioners when combined with their current responsibilities.

### **Conclusion**

The committee makes no recommendation regarding its study of the structural relationship between the State Water Commission and water resource boards and methods for improving water resource board accountability.

## **METHODS FOR ASSESSING THE COST OF A PROJECT IN RELATION TO THE BENEFITS RECEIVED**

### **Background**

In North Dakota, water resource boards are granted the general power to issue warrants to finance the construction of water conservation and flood control projects and assess benefitted property for all or part of the project's costs. Water resource boards have the authority under Chapters 61-16.1 and 61-21 to levy special assessments for the purpose of constructing, altering, and maintaining assessment drains.

A special assessment for drainage projects must be apportioned to the benefit received and cannot exceed the amount by which the property benefits from the project or improvement.

Water resource boards are required to inspect any lots and parcels of land that may be subject to assessment and determine from the inspection the particular lots and parcels of land which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made. Water resource boards are required to assess the proportion of the total cost of the project in accordance with benefits received.

### **Testimony and Committee Discussion**

The committee received testimony from a representative of the State Water Commission regarding the methods for assessing project costs for assessment projects relating to water management.

The committee received testimony regarding the tool maintained and used by the State Water Commission for estimating land benefit and assessment costs for projects submitted to the Department of Water Resources. Testimony indicated benefits are categorized as public or private as well as direct and indirect.

When determining public benefits, the Department of Water Resources takes into consideration impacts on roads and bridges and other infrastructure used by the public. However, private benefits take into consideration factors such as property value, production of land, and avoided damage caused by flooding. Direct benefits include avoided damages to crop loss, structures, and other physical assets while indirect benefits include the benefits to parks, bridges, and roads.

The committee received testimony emphasizing the need to ensure assessments are proportioned to the benefits received. The committee was informed if the project costs increase, documentation must show how and why one assessment is higher than another. If there is no calculation for benefits, the calculation is based solely on project costs and distribution and is not dependent on benefit received. Law dictates the cost of an assessment cannot outweigh the benefits received. Additionally, a cost-benefit ratio is required on a parcel-by-parcel level and project level. Each assessed parcel and each project must have a cost-benefit ratio equal to or greater than 1.

The committee received testimony summarizing the two benefit models used. The first is a dollar-per-acre assignment, in which each parcel is billed in an amount equal to the project cost divided by the total number of acres. The dollar-per-acre model is based entirely on the properties within the assessment district and does not address any factors pertaining to indirect beneficiaries.

The second model is a percentage model which is a semi-arbitrary calculation of cost based on the parcel's distance from the drain, with special consideration for some parcels.

The committee was informed of several issues regarding the current models, including a general problem that not all lands within the assessment district are assessed and not all indirect beneficiaries are included in the assessment district. The models consider direct beneficiaries within the assessment district without considering the watershed as a whole. Additionally, percentages of assessments often are negotiated rather than measured by the benefits to the parcel. None of the current models calculate or are based on the benefits received as required by law. As a result, every project always will return a cost-benefit ratio equal to or greater than 1 because the original calculation was based on cost and not the benefits received.

Testimony indicated a need to calculate benefits to both the properties within the assessment district and the properties benefiting within the watershed of the proposed drain at a rate independent from the cost of the project. The committee received testimony indicating the tool used by the Department of Water Resources provides the information and calculations needed to analyze benefit-cost calculations for assessment projects.

The tool used by the Department of Water Resources calculates the benefit of the project by analyzing several factors, including damage functions from the Federal Emergency Management Agency for a 5-year or 10-year flood event, insurance claims, rain events, and other economic probabilities. The tool calculates the benefits to the project and divides the calculation into benefits to the parcels.

The committee received a tutorial on using the economic analysis tool and received testimony indicating the tool can be used to estimate assessments on property ranging from an agricultural field to an entire city.

The committee discussed the need to address the concerns of landowners who believe the costs of their assessments are disproportioned to the benefits they will receive from the project. The committee agreed the law does not provide enough clarification as to why some landowners are paying higher assessment costs. The committee agreed the cost-benefit analysis tool would address this issue; however, the committee was divided on mandating every project conduct a cost-benefit analysis because requiring an analysis on each project could increase project costs. Taking into account landowner concerns relating to transparency in their assessments and concerns relating to additional administration costs, the committee reviewed a bill draft that would represent a compromise between the competing interests by requiring the use of the economic tool used by the Department of Water Resource to calculate a cost-benefit analysis for projects costing \$1 million or more.

### **Recommendation**

The committee recommends a bill draft [23.0025.03000](#) to require the use of a tool to calculate a cost-benefit analysis for assessment projects costing \$1 million or more.

# 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:

- Legislative overview of water topics and related matters;
- The Garrison Diversion Project; and
- Any necessary discussions with adjacent states on water topics.

In addition, the committee may meet with the State Water Commission (SWC) and must:

- Work collaboratively with the SWC;
- Report on the committee's project prioritization process;
- Provide updates on allocated program expenditures; and
- Report on the fund balances of projects, grants, and contracts.

In addition to its statutory responsibilities, the committee was assigned two studies:

- Section 13 of House Bill No. 1020 (2021) directed a study, with input from SWC and from stakeholders of the Red River Valley Water Supply Project (RRVWSP), of the management and operation of the RRVWSP. The study required consideration of the appropriate entity to own, manage, and operate the project.
- Section 14 of House Bill No. 1020 directed a study, with input from SWC, of the Northwest Area Water Supply (NAWS) Project. The study required consideration of an entity, other than the state, to own, manage, and operate the project.

The committee was assigned the responsibility to receive the following five reports:

- Quarterly reports from SWC regarding the projects designated as carryover projects that have had a cost-share agreement in place for at least 4 years, the amount of funds still committed for each carryover project included in the report, the total amount of funds reallocated or made available from carryover projects included in a previous report to other projects since the commission's preceding report, and the status of each carryover project for which the committee has made a recommendation to terminate since the commission's preceding report, pursuant to Section 6 of House Bill No. 1020. The committee may make a recommendation to SWC that a carryover project included in a report be terminated under Section 61-02-14.3 and any funds remaining for the carryover project be reallocated and made available for projects with the same general purpose as the carryover project.
- A report, no later than August 1, 2022, from SWC on the results of the basinwide water plan pilot project, pursuant to Section 9 of House Bill No. 1020.
- A report from the NAWS Advisory Committee regarding recommendations for the transition of the long-term operation and management of the NAWS Project, pursuant to Section 10 of House Bill No. 1063 (2021).
- A report from the NAWS Advisory Committee regarding the status of the advisory committee's responsibilities under Section 61-24.6-03, pursuant to Section 11 of House Bill No. 1063.
- A written report, before November 1, 2022, from the Onsite Wastewater Recycling Technical Committee (OWRTC) regarding the status of the statewide technical guide and the committee's recommendations, pursuant to Section 3 of House Bill No. 1183 (2021).

Committee members were Representatives Jim Schmidt (Chairman), Tracy Boe, Chuck Damschen, Jay Fisher, Michael Howe, Bob Martinson, Jon O. Nelson, Marvin E. Nelson, Todd Porter, Matthew Ruby, and Denton Zubke and Senators Michael Dwyer, Joan Heckaman, Jason G. Heitkamp, David Hogue, Jordan Kannianen, Jim P. Roers, Ronald Sorvaag, and Mark F. Weber.

## **LEGISLATIVE OVERVIEW OF WATER TOPICS AND RELATED MATTERS**

### **Missouri River Water Usage Update**

The committee received testimony from representatives of the Missouri River Joint Water Board, the Missouri River Recovery Implementation Committee, and the nonprofit organization Friends of Lake Sakakawea. Representatives from these entities urged the state to use more water from the Missouri River. North Dakota contributes roughly 10 percent of the water in the Missouri River and uses 1 percent of the water that flows through the state. The western United States is in a severe drought. The testimony stressed the importance of the state to use more water from the Missouri River before other states begin to deplete the river.

The committee also received testimony from the Garrison Diversion Conservancy District and the North Dakota Irrigation Association. Testimony indicated whether irrigation is allowed in a certain area depends on whether adequate water supply exists. Irrigation supply is derived from underground aquifers or surface waters. Approximately 300,000 acres of irrigation in the state is used in the production of crops and livestock forage. The state has the potential to increase irrigation substantially with approximately 300,000 acres in the Missouri River corridor and an additional 200,000 acres in other parts of the state. Proponents of increased irrigation are seeking to use Missouri River water as a potential irrigation water source. Limiting factors in using the Missouri River for irrigation are the cost of power and the cost of building infrastructure to carry power for irrigation.

### **North Dakota Rural Water Systems Association Projects**

The committee received testimony from representatives of the North Dakota Rural Water Systems Association regarding ongoing and planned projects in the state. Of the 355 incorporated cities in the state, 267 cities are supplied by rural or regional water, while 88 cities have their own source of water. A regionalized water supply system is beneficial to smaller communities from a cost perspective. The proposal to decrease the state's share of the cost of water supply projects from 75 to 65 percent would increase the price of water for rural water users. The association is opposed to changing to the cost-share provision in Section 61-02-01.04.

### **Water Development on North Dakota Trust Lands**

The committee received testimony from representatives of the Department of Trust Lands regarding water development on state trust lands. Testimony indicated development under the Livestock Water Development Program is considered a permanent improvement to the land and becomes the property of the state. The cost of completing a permanent improvement is the responsibility of the lessee, but a cost-share option is available if the project is approved. Lessees must apply for and receive permits for permanent improvements. Permits are reviewed and approved by the Commissioner of Trust Lands. Nonpermanent improvements are the property of the lessee and are not eligible for a cost-share from the state. Nonpermanent improvements include submersible pumps, windmills, solar panels, water tanks, and anything that can be removed from the land. Permanent improvements are eligible for a 100 percent cost-share from the state. Each improvement made to the land is subject to a state spending cap. Additional funds were set aside to help fund permanent water supplies on trust lands due to the 2021 drought. A permanent water supply is a well, rural water pasture connection, tap, or water pipeline that originates from a water source on trust land.

### **Major Flood Events**

The committee received testimony from representatives of Valley City regarding major flood events in Spring 2022. Testimony indicated the amount of clay needed for temporary flood protection in Valley City decreased from 220,000 cubic yards in 2011 to 28,000 cubic yards in 2022 as a result of the state's commitment to permanent flood protection. Flood protection cleanup costs decreased from \$170,000 in 2011 to \$7,000 in 2022 due to less clay needing to be removed. Additional funds may be required to complete permanent flood protection measures in Valley City.

The committee received testimony from representatives of Walsh County regarding major flood events in Spring 2022. Testimony indicated lack of drainage in the affected areas resulted in overland flooding and several dams being subjected to severe stress. The United States Department of Agriculture and Natural Resources Conservation Service have constructed 10 dams in Walsh County. Dams undergoing dam rehabilitation, including Matajeck Dam, are classified as medium-hazard dams, but are being upgraded to high-hazard dams due to elevated risk. Federal criteria for a high-hazard dam classification is the potential for any loss of life downstream of the structure. The Matajeck Dam has not undergone any major renovations or refurbishments, other than routine operation and maintenance, since its construction in 1966. Additional drainage is needed in the Forest River area to prevent future flooding.

### **Water Resource District Audits**

The committee received testimony from a representative of the State Auditor's office regarding audits of water resource districts. Testimony indicated the State Auditor's office is attempting to foster improved communication with water boards that have failed to submit required audit paperwork. A citizen complaint does not generally trigger a new financial audit. A citizen complaint is considered on subsequent audits completed on an entity that has received a

complaint. The State Auditor's office asserted statutory authority exists to allow the office to audit water districts in addition to water resource districts. Most complaints filed with the State Auditor's office relate to water drainage issues.

### **Department of Environmental Quality - State Drinking Water Program**

The committee received testimony from a representative of the Department of Environmental Quality (DEQ) regarding the state drinking water program. Testimony indicated DEQ is responsible for the protection of public and environmental health through the implementation of environmental protection programs in the state. Many of the protection programs reflect federally mandated programs implemented at the state level through primacy agreements with the United States Environmental Protection Agency (EPA). The programs include the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and the Safe Drinking Water Act (SDWA). The mission of the drinking water program is to ensure regulated drinking water systems provide safe and clean drinking water to all citizens of the state. The Safe Drinking Water Act is codified in Chapter 61-28.1. The provisions of the SDWA are enforced by the DEQ Division of Municipal Facilities. The division has 30 full-time employees comprised of environmental scientists, engineers, and administrative support. The division regulates 500 public water supply systems. Of the 500 public water supply systems, 309 are community water supply systems, 69 are noncommunity water supply systems, and 122 are regulated by the state.

The committee received testimony from a representative of DEQ regarding the replacement of lead water supply service lines. Federal law requires all water systems in the state have a complete inventory of lead service lines and a plan for line replacement in place by October 16, 2024. Replacement is required for all water supply lines containing 10 parts per billion or more of lead.

### **Public Finance Authority - Revolving Loan Funds**

The committee received testimony from a representative of the Public Finance Authority. Testimony indicated state revolving fund (SRF) programs primarily are loan programs. Loans can be amortized over 30 years at 2 percent interest. State revolving fund programs receive capitalization grants from the EPA. State revolving fund programs are administered jointly by DEQ and the Public Finance Authority. No state funds are used in SRF programs. Bonds are issued to provide the required state match and leverage the program. State revolving fund programs are required to provide some of the capitalization grants as additional subsidies. State SRF programs develop priority ranking systems for the provision of additional subsidies which must be approved by the EPA. The clean water SRF is one of the only state funding sources for sanitary and storm sewer projects. The fund offers grants in the form of loan forgiveness. The drinking water SRF provides the local cost-share for many projects funded by the Department of Water Resources' (DWR's) cost-share program. Bonding likely will be a less attractive option in the next legislative session due to rising interest rates.

### **Department of Commerce - Community Development Block Grant**

The committee received testimony from a representative of the Department of Commerce regarding the Community Development Block Grant (CDBG). Testimony indicated the CDBG is the most frequently used resource for water and sewer projects by communities that meet the federal thresholds to qualify for the grant. The Department of Commerce Community Services Division administers the CDBG program, which is funded through the United States Department of Housing and Urban Development. The Community Development Block Grant program provides financial assistance to eligible units of local governments through grants and loans for public facilities, housing rehabilitation, and economic development projects. The primary beneficiaries of the projects must be low- and moderate-income individuals. The Department of Commerce has distributed more than \$28 million to 35 communities in the state over the past 5 years.

## **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 (SWPP), which was the first state water project. Since then, the number and scope of water projects overseen and regulated by SWC increased dramatically. The 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 Department of Water Resources was created by House Bill No. 1353 (2021). The department was previously called the State Water Commission, which itself was created by legislative action in 1937 for the specific purpose of fostering and promoting water resources development throughout the state. House Bill No. 1353 restructured the agency, appointed a director, and made the director of the department a member of the Governor's cabinet.

The Department of Water Resources has the authority to investigate, plan, construct, and develop water-related projects, and serves as a mechanism to financially support those efforts throughout the state. The department is comprised of seven divisions: Administration, Atmospheric Resources, Planning and Education, Regulatory, State Engineer, Water Appropriation, and Water Development.

The Department of Water Resources' mission is to responsibly manage the state's water needs and risks for the people's benefit. The department sustainably manages and develops the state's water resources for the health, safety, and prosperity of the state's people, businesses, agriculture, energy, industry, recreation, and natural resources.

### **Testimony and Committee Considerations**

At each committee meeting, a member of SWC provided an update on SWC operations and activities, and a representative from DWR provided an update on the SWC budget and the status of projects funded by SWC. The total amount of funds appropriated to DWR in the 2021-2023 biennium was \$551 million. The amount carried over from the 2019-2021 biennium was \$285 million. Thus, the total funds available to DWR for projects were just over \$837 million. Of those funds, DWR appropriated \$518 million for projects. The projected carryover balance through June 30, 2023 is \$259 million, which is consistent with previous years. The department was awarded \$75 million under Senate Bill No. 2345 (2021). Roughly \$19 million of the \$75 million has been spent.

The committee received information regarding the resources trust fund and the water projects stabilization fund. Representatives from DWR also provided testimony on the usefulness of the life cycle cost analyses and economic analyses to help evaluate which projects should be funded and the amount of funding each project requires.

The committee discussed the use of released carryover funds from the 2019-21 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 for which the funds were appropriated originally.

Representatives from DWR provided updates regarding proposed cost-share modifications. The department continues to discuss appropriate cost-share figures for rural and municipal water supply projects with stakeholders. Commissioners from SWC expressed support for the state's maximum commitment for rural water supply projects remaining at 75 percent. Representatives of DWR discussed the NAWS, Western Area Water Supply Authority (WAWSA), RRVWSP, and SWPP. Once completed, these four regional water supply projects directly benefit and provide water to 80 percent of North Dakota residents.

Representatives from DWR discussed dam safety and risk-hazard classification. The department plans to amend existing administrative rules governing risk-hazard classification. Under the new proposal, a dam would be labeled high-risk if a dam failure would result in any downstream probable loss of human life. To determine whether loss of human life is probable, an analysis of whether the downstream area has the potential presence of people and the lethality or severity of flooding is required.

Representatives of DWR discussed irrigation permitting procedures and efforts to make the process more efficient. Irrigation permits only may be issued if a sufficient water supply is available. The process to obtain a permit includes an application, affidavit of notice, affidavit of publication, and a required 30-day comment period. After the application period, a hydrological analysis is conducted by a hydrologist from DWR. The department makes a recommended decision once the analysis is complete. The department conducts further analyses to determine whether a permanent irrigation permit will be issued.

The committee expressed frustration with the permitting process and extended delays before a permit is issued. The Department of Water Resources discussed the need for additional hydrologists to increase the turnaround time for permits. The committee also expressed frustration regarding permits being placed in abeyance. Representatives of DWR indicated placing an irrigation permit in abeyance allows DWR to restart the permit when sufficient water is available without requiring the applicant to reapply. An applicant that must reapply would lose the applicant's priority for water rights. Placing the permit in abeyance preserves the applicant's priority. A deferred permit is one on which DWR has not acted and is preferable to a denied permit. The department is responsible for developing a model for real-time monitoring of aquifer levels to help determine when permits must be deferred or put in abeyance.

Representatives of DWR discussed the use of hydrologic unit codes (HUC). The HUC system is a hierarchical land area classification system created by the United States Geological Survey which is based on surface hydrologic features in a standard, uniform geographical framework. The department uses HUCs when analyzing projects according to watershed and natural drainage boundaries, rather than natural political boundaries.



The committee received information regarding water management from a basinwide perspective. The pilot project sought to have water resource boards in a common basin work together, reducing the number of requests submitted to DWR, and having funding provided on a basinwide basis rather than for each project. The State Water Commission approved a pilot project in August 2021 for the Upper Sheyenne River Joint Water Resource Board. The joint board received \$1.1 million from SWC for the pilot project. The joint board worked with several partners to gain additional support. The pilot project began with five sites, which were included in the pilot project funding request, and now has expanded to additional sites in Eddy, Nelson, Wells, and Benson Counties. The joint board expressed gratitude to the DWR and SWC for implementing the basinwide pilot project. Because the pilot project is not complete, DWR and SWC will continue to receive updates as the project progresses.

## **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 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 was 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 was to be used for Fargo interior flood control projects and required 50 percent matching funds from the FM Area Diversion Authority. These funds were to be expended only for Fargo interior flood control projects, including levees and dikes, until a federal appropriation was 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 would end June 30, 2021, if a federal appropriation had 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 was 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 that \$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**

The committee received testimony from a representative of the FM Area Diversion Project. Testimony indicated the Red River Valley Alliance, an international group, was the winning bidder for the public-private partnership (P3) project, which is a portion of the overall diversion project. After the P3 project is complete, the operation and management costs will be funded by sales tax revenue. Using the P3 project model arguably reduced the overall diversion project timeline by 10 years. Progress is continuing on the inlet control structure and the Wild Rice River control structure. The large quantity of materials needed for the diversion project will impact the market for those materials in the state. Project sponsors want to ensure local companies do not face material shortages as a result of the project. Project sponsors acquired approximately 700 parcels for the project, at least 90 of which were acquired through eminent domain. Minnesota appropriated \$4 million to \$5 million, out of an anticipated total of \$17 million, for the project during the last legislative session. The Minnesota Legislature will be able to appropriate the remaining amounts for Minnesota's project components before the scheduled construction period of 2026-27. North Dakota's and Minnesota's federal delegations secured \$437 million for the project under the federal Infrastructure Investment and Jobs Act.

## **Souris River Basin Flood Control**

The committee toured the flood control structures in and around Minot. The committee received testimony from representatives of the City of Minot and the Souris River Joint Board. Testimony indicated throughout the 2021-23 biennium, the project received \$84.5 million. House Bill No. 1431 (2021) was a bonding bill that appropriated

\$74.5 million to the project. House Bill No. 1020 (2021) appropriated \$10 million to SWC for the project. Of the total funds appropriated, \$71.35 million was allocated to the Souris River Joint Board for the construction and engineering throughout the Souris River Basin. The remaining \$13.15 million was allocated to the City of Minot for acquisition activities within Minot city limits. The first milestone of the project is nearing completion. Once completed, the infrastructure will result in 60 percent of Minot residents being removed from the Federal Emergency Management Agency regulatory flood plain.

### **Western Area Water Supply Authority**

The committee received testimony from a representative of WAWSA. From 2011 to 2020, total connections increased by 193 percent. The total number of connections is roughly 5,000 customers. This increase is consistent with the population growth in northwest North Dakota. Some WAWSA debt was restructured, which has given the authority more flexibility from an accounting standpoint. Legislation to move WAWSA from the Industrial Commission to DWR will be introduced in the 2023 legislative session. The authority reports to both DWR and the Industrial Commission.

### **Southwest Pipeline Project**

The committee received information regarding the status of the SWPP, which is owned by the state and operated and maintained by the Southwest Water Authority (SWA). Testimony indicated SWA sets aside funds for Replacement and Extraordinary Maintenance (REM). For nonrural water customers, nearly 12.3 percent of the water rate is set aside for REM. For rural water customers, nearly 12.5 percent of the water rate is set aside for REM. As of March 31, 2022, the ending REM balance was \$23 million. No specific formula is followed to determine the requisite amount of funds SWA sets aside for REM within the system. To access REM funds, the expenditure must exceed \$20,000 and not be considered operation and maintenance. Several distribution lines are being replaced due to aging. Water suppliers are being forced to pass this expense on to consumers due to rising costs and scarcity of food-grade carbon dioxide. The anticipated funding request for the SWPP is \$104 million. If the actual appropriation is less than \$104 million, strategic improvements within SWA likely would be delayed until the 2025-27 biennium. The capacity of the Dickinson water treatment plant is 12 million gallons. The plant will have a capacity of 18 million gallons when the new Dickinson water treatment plant is completed. In 2022, during peak consumption, customers consumed 11 million gallons of water per day.

## **RED RIVER VALLEY WATER SUPPLY PROJECT STUDY**

Section 13 of House Bill No. 1020 (2021) directed a study of the management and operation of the RRVWSP. The study required input from SWC and stakeholders of the project and consideration of the appropriate entity to own, manage, and operate the project.

### **Background**

Communities in the Red River Valley have experienced unreliable supplies of water due to the fluctuations in the Red River water levels and increased population growth in the valley. Although the river is known to flood, it also has experienced drought conditions that jeopardize residents' access to drinking water and industrial water. To ensure residents in the Red River Valley have access to a reliable water supply, the federal Dakota Water Resources Act of 2000 authorized the RRVWSP. The Dakota Water Resources Act required North Dakota and the United States Bureau of Reclamation within the United States Department of the Interior to prepare an Environmental Impact Statement (EIS) assessing alternative methods to accomplish the goals of the RRVWSP. The Garrison Diversion Conservancy District was tasked with representing North Dakota in this effort and entered a memorandum of understanding with the Bureau of Reclamation. A draft EIS identifying eight alternatives for the project was released in 2005 and supplemented in 2007 after the comments on the draft statement were considered. The final EIS was released later in 2007 and identified a preferred alternative called the Garrison Diversion Unit for the project. The Garrison Diversion Unit was intended to transport water through the McClusky Canal and utilize a buried pipeline from a biota treatment facility to the Sheyenne River north of Lake Ashtabula. The lake would act as a regulating reservoir, and water would flow from the lake into the Red River. The final EIS also included 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.

Although Congress was briefed on the Garrison Diversion Unit, the federal government has not authorized construction of the project. As a result, in 2013 the RRVWSP's local stakeholders began work to identify ways to implement the project without federal participation. The stakeholders conducted additional studies and determined the best option for the project would be to bring water from the Missouri River to the Sheyenne River via a buried pipeline running close to Highway 200. The new plan included an intake facility located on the Missouri River close to Washburn and kept Lake Ashtabula as a reservoir. Under the new plan, water will be treated before it crosses the Continental Divide. Due to state legislation passed in 2015, the project was expanded to serve users along the pipeline route in central North Dakota. The Garrison Diversion Conservancy District continues to serve as the state representative on the

project, and the Lake Agassiz Water Authority serves as the representative of the local water users to be served by the project.

The concept for the state and local project was completed in 2016, and the preliminary design report was completed in 2018. As the project has progressed, changes have been made to the design. For example, the original plan was intended to avoid a nexus with federal agencies and utilize horizontal collector wells above the ordinary high water mark of the Missouri River, but in 2020, the Garrison Diversion Conservancy District asked the Bureau of Reclamation to provide 145 cubic feet per second of water from the McClusky Canal, in addition to 20 cubic feet per second already authorized, as an alternate water supply for the RRVWSP. The Garrison Diversion Conservancy District indicated the alternate water supply will result in savings for the state and local water users. The Bureau of Reclamation conducted the required EIS regarding the allocation of water, and a record of decision effectively authorizing the alternate water supply was signed in January 2021. Construction on the project's pipeline and the discharge structure six miles south of Cooperstown is ongoing. According to project sponsors, construction on the intake screen structure and tunnel is contingent on the receipt of funding from SWC.

House Bill No. 1020 appropriated \$50 million to SWC for the RRVWSP. The project sponsors stated a local cost-share of \$16.7 million will be provided. Additionally, House Bill No. 1425 (2021) created a legacy infrastructure loan fund through the Bank of North Dakota which provides low-interest loans for qualifying infrastructure programs. The Garrison Diversion Conservancy District and Lake Agassiz Water Authority requested a loan from the fund. House Bill No. 1431 (2021) added \$50 million to an existing infrastructure revolving loan fund and created a new water revolving loan fund that may result in additional resources becoming available for the RRVWSP.

### **Testimony**

The committee received testimony at each of its meetings regarding the status of the operation and ownership of the RRVWSP. Representatives from the Garrison Diversion Conservancy District provided testimony related to the continued effort to increase irrigation from Lake Sakakawea. Potential issues hindering expanded irrigation are project costs and approval from the Bureau of Reclamation. State law allows either the Garrison Diversion Conservancy District or the Lake Agassiz Water Authority to own the RRVWSP. The Lake Agassiz Water Authority and Garrison Diversion Conservancy District both agree the Garrison Diversion Conservancy District should own the RRVWSP.

Representatives of the Garrison Diversion Conservancy District proposed an accelerated timeline for construction of the project. Testimony indicated project costs will decrease by \$20 million to \$30 million for each biennium by which project timelines are reduced. An alternate plan regarding the intake location for the RRVWSP was proposed. Under the alternate plan, the RRVWSP would receive water out of the McClusky Canal, rather than directly from the Missouri River in Washburn. This plan is called the eastern North Dakota water alternate supply (ENDAWS) project. If the entire 165 cubic feet per second of water is taken from the McClusky Canal for the project, the Washburn intake structure may serve as a backup source of water for the project, but there would be costs to connect the structure to the project components. Using ENDAWS instead of the Washburn intake structure may save up to \$200 million in overall construction costs. A decision to move forward on portions of the project dependent on ENDAWS will have to be made within the next 2 years. The total cost of the project includes a 25 percent local match. Project costs are being re-evaluated due to inflation.

The Garrison Diversion Conservancy District, Fargo, and Grand Forks would be the signatories on the project loan from the water infrastructure revolving loan fund. The project sponsors will request a 75 percent cost-share from the state. The state has not set a maximum appropriation amount for the project. The anticipated life cycle of the RRVWSP is 100 years. Construction is progressing four miles south of Washburn on an intake wet well, cofferdam, and the screens and piping connecting the wet well to the Missouri River. Negotiation with landowners for the installation of 72-inch steel transmission pipe is underway in Griggs, Foster, and Wells Counties and installation has commenced in Foster County. A funding request of \$255 million is anticipated for the 2023-25 biennium. As of June 2022, the state has allocated \$86 million to the RRVWSP and political subdivisions have provided \$26 million. Only 8.2 percent of the \$1.36 billion in necessary project funds have been secured.

The committee received testimony from landowners affected by the RRVWSP and their legal counsel. Testimony indicated the proposed pipeline is a 72-inch steel pipeline that will be buried seven feet underground. The Garrison Diversion Conservancy District's fair market offer is \$1,350 per acre. The Garrison Diversion Conservancy District has served a summons and complaint upon the parties, thus formally commencing eminent domain proceedings. Other pipeline easements in the area must be considered when determining just compensation. Typically, just compensation for other pipeline easements is higher than the fair market value for agricultural use. The landowners have not been provided any plans for abandonment of the pipeline at the end of the project's life cycle. Landowners expressed a preference for easement negotiations as opposed to eminent domain proceedings. Landowners expressed concerns related to project ownership, the uncertain completion date, federal and international cooperation, and abandonment procedures at the end of the project's life cycle.

### **Committee Considerations**

Based on the testimony provided, the committee determined the Garrison Diversion Conservancy District should continue to own, manage, and operate the RRVWSP.

### **Conclusion**

The committee makes no recommendation regarding its study of the management and operation of the RRVWSP.

### **NORTHWEST AREA WATER SUPPLY PROJECT STUDY AND REQUIRED REPORTS**

Section 14 of House Bill No. 1020 directed a study, with input from SWC, of the NAWS Project. The study required consideration of an entity, other than the state, to own, manage, and operate the project.

The committee was assigned the responsibility to receive a report from the NAWS Advisory Committee regarding recommendations for the transition of the long-term operation and management of the NAWS Project and the status of the advisory committee's responsibilities under Section 61-24.6-03, pursuant to Sections 10 and 11 of House Bill No. 1063 (2021).

### **Background**

The NAWS Project is a joint state and federal project to provide water to northwestern North Dakota from the Missouri River Basin. Approximately 81,000 residents live in the NAWS service area, which includes parts of Burke, Ward, Renville, Bottineau, and McHenry Counties. Before NAWS, there were significant concerns about the quality and quantity of the residents' water supply. In some communities, the water failed to meet drinking water standards. As a temporary solution, Minot began providing drinking water to several communities in the service area, but the Minot aquifer is insufficient to supply the communities on a permanent basis. The NAWS Project is intended to provide a long-term solution by treating and supplying water from the Missouri River Basin to Minot and the affected communities.

The federal Garrison Diversion Reformulation Act of 1986 provided the initial authorization for NAWS. In 1991, the Legislative Assembly passed a bill creating the NAWS Advisory Committee and granted SWC authority to construct, operate, and manage the project. In 2000, the federal Dakota Water Resources Act reauthorized the project with funding from the United States Bureau of Reclamation's Municipal, Rural, and Industrial Grant Program. The Bureau of Reclamation is part of the United States Department of the Interior.

Construction of NAWS began in 2002, but soon became delayed by lawsuits initiated by Manitoba and Missouri. Manitoba objected to the project moving water across the Continental Divide and into Canada because of the risk that harmful biota would be introduced into Canadian waters. Manitoba filed a lawsuit in United States federal court seeking to stop construction of the project and alleging the environmental assessment conducted for the project under the National Environmental Policy Act (NEPA) was inadequate. In 2005, the court ordered the Bureau of Reclamation to conduct additional environmental analyses but allowed portions of the project to continue development.

Pursuant to the court order, the Bureau of Reclamation issued a final EIS at the end of 2008. However, Manitoba filed a supplemental complaint in early 2009 alleging the final EIS was inadequate under NEPA. Missouri also filed a lawsuit in the same federal court against the Department of the Interior and the United States Army Corps of Engineers (Corps) over NAWS. Like Manitoba, Missouri alleged the final EIS was inadequate. Missouri also argued the Corps should have completed a separate environmental analysis under NEPA. Unlike Manitoba, Missouri was concerned NAWS would deplete the Missouri River and negatively impact Missouri's ability to use water from the river.

In 2010, the court ordered the Bureau of Reclamation to analyze the environmental impact of NAWS further. In 2013, the court stopped construction of the project until the analysis was completed. A final supplemental EIS was issued in 2015. As part of the supplemental analysis, the Department of the Interior determined full treatment of the water before it crosses the Continental Divide was the preferred method for addressing environmental concerns. In 2017, the federal court issued a ruling for the Department of the Interior and North Dakota which allowed construction on NAWS to recommence. Although Manitoba and Missouri appealed the ruling, the appellate court reaffirmed the ruling in 2019. Construction of the project is ongoing.

Throughout the litigation, the Water Topics Overview Committee received updates on the lawsuits and the construction of NAWS. The 2019-20 interim Water Topics Overview Committee discussed concerns about the condition of some of the project's physical assets that lay dormant through the litigation. The committee was informed the statutorily created NAWS Advisory Committee had not been holding meetings, and the committee expressed concern regarding the lack of meetings. The committee also received regular status reports of the funding for the project, which comes from the Bureau of Reclamation's municipal, rural, and industrial grants; state appropriations; and a cost-share provided by Minot through collection of a 1 percent city sales tax. The total cost of the project was not known because contracts for some phases of the project had not been bid. According to figures provided by SWC, the estimated cost of the contracts

awarded through July 2021 was roughly \$171 million. Future contracts will be necessary to construct booster pump stations and water treatment plants for the project. Approximately \$91 million of the \$171 million for existing contracts will come from federal funds, and approximately \$22 million will come from Minot. State funds are expected to cover the remaining \$58 million. Due to the delayed receipt of federal grant funds, the state also appropriated a \$75 million line of credit from the Bank of North Dakota to be reimbursed by federal grants. As of July 2021, the line of credit had not been accessed.

### Testimony

The committee received testimony from representatives of the NAWS Advisory Committee. The NAWS Advisory Committee met throughout 2021 to make recommendations for the long-term operations and management of NAWS, as required by House Bill No. 1063. The advisory committee developed 11 recommendations to ensure the project's success:

1. NAWS must continue to operate as a state-owned project. Transferring ownership of the project to a private entity could subject the project to future litigation and could create division among project stakeholders.
2. All existing contracts must be honored. Numerous water service, finance, and interim water supply contracts have been in place for several decades. All current and future contracts must be reviewed by the NAWS Advisory Committee or a subcommittee of the advisory committee.
3. The NAWS biota treatment plant ("Biota Plant") is a federal requirement. The federal government is responsible for construction, operation, and maintenance expenses for any facilities in operation to comply with the Boundary Waters Treaty Act. Federal funding is limited to \$200 million for these types of projects. The purpose of the Biota Plant is to mitigate the transfer of invasive species across the Continental Divide. Construction and operational expenses associated with the facility are eligible for federal funding.
4. The Biota Plant and the Minot Sundre Aquifer Wellfield ("Sundre Aquifer") must be under the control of the City of Minot. The Garrison Diversion Project included the delivery of Missouri River water to the Minot area. A 50-year agreement between the City of Minot, the Bureau of Reclamation, and the Garrison Diversion Conservancy District to construct a water supply line from the Sundre Aquifer to the Minot Water Treatment Plant was approved on January 26, 1972. The line from the Sundre Aquifer to Minot still is in use. The Sundre Aquifer can provide a backup supply if the water supply from Lake Sakakawea is interrupted for any reason. The operations and maintenance of the Biota Plant is a federal responsibility. However, the Biota Plant, Sundre Aquifer, and the city of Minot's existing water treatment plant ("Minot Plant") must operate as a single system. The Biota Plant and the Minot Plant should be operated by the City of Minot to simplify compliance with primary drinking water regulations.
5. The ownership of the Minot Plant must remain with the City of Minot. Use of the Minot Plant for the NAWS Project was established early in the project's development. The arrangement is similar to the use of the City of Dickinson's water treatment plant by the SWPP. Additional improvements to the Minot Plant are planned as a result of the NAWS Project.
6. Expansion of NAWS territory must be accomplished by mutual assent of all locally affected water supply entities. Connecting additional users to the system could compromise the ability of the project to deliver contracted quantities of water to existing customers.
7. Maintenance, availability, and eligibility should be identified and understood by all water user entities. The eligibility and availability of any work to be completed using funds collected by the NAWS Project through water bills should be clearly identified to the consumer.
8. Payment to the state for operation and maintenance and REM will continue as defined by law and current water user entity contracts. The NAWS Project should be self-supporting, with payments for operation and maintenance and REM continuing as defined in the water user contracts. Operation and maintenance and REM will be funded by revenues generated by the NAWS water sales, and those revenues will not be used for any other purpose. Since NAWS is a state-owned project, funds for operation and maintenance and REM must be appropriated by the Legislative Assembly from water rate revenues.
9. The City of Minot's local cost-share will end when the project described by the 1999 agreement between the City of Minot and SWC is completed. The agreements between SWC and the City of Minot have evolved over the years, but the underlying principle has not changed. The local share of the capital cost of the project, as well as operational costs related to the construction and management of the project, have been paid in cash on a monthly basis since construction commenced. Payments for the local cost-share were derived from city sales tax collections. The initial interim financing agreement committed the City of Minot to partially underwrite the SWC's cost initially for the project works from the intake on Lake Sakakawea or Lake Audubon to the city's water treatment plant. Subsequent amendments extended the city's responsibility to fund 35 percent of the SWC's costs to build additional segments of the project.

10. All water user entity agreements should be extended and should establish a long-term operation and maintenance plan that incorporates recommendations from the Legislative Assembly, DWR, SWC, and NAWS Advisory Committee. The NAWS Advisory Committee is striving to implement standardized language in all water service contracts to outline the responsibilities and obligations of the parties to the contracts.
11. NAWS is a wholesale transmission line and is not a rural distribution system. Existing rural water districts and customers must be recognized. Customers eligible to be direct customers of NAWS must meet the conditions outlined in North Dakota Administrative Code Chapter 89-13. No individual users are eligible to be a direct NAWS customer.

The committee received testimony from representatives of DWR. Approximately \$170 million is needed to complete the NAWS Project, and much of that amount is needed to complete the Biota Plant near Max. Although the federal government is responsible for the costs of the Biota Plant pursuant to the federal Dakota Water Resources Act, the only federal funding available for the project is through the Municipal, Rural, and Industrial Water Supply Program, which is limited to \$200 million in funding. Discussions have occurred regarding increasing the \$200 million funding limitation. The NAWS Advisory Committee does not have the authority to place the Biota Plant in Max; however, the committee finds Max to be a permissible site for the plant. An agreement to place, operate, and maintain the Biota Plant must be executed by the Bureau of Reclamation on behalf of the United States, and SWC on behalf of North Dakota. Additional contracts would need to be executed between the state and the City of Minot for operation of the Biota Plant. A total of \$54 million of state funds have been invested in the project. In February 2022, SWC approved \$750,000 in cost-share for an additional well in the Sundre Aquifer to maintain raw water capacity for the city of Minot and the NAWS Project. The new well will ensure NAWS can meet interim water demands until Lake Sakakawea water can be delivered to Minot. The new well also will lessen impacts from several dry years and ensure an adequate water supply during periods of drought. The intake system will be located at the Snake Creek Pumping Plant. Internal and external work is necessary to ensure the facility can operate at its required capacity. Internal modifications do not require permits from the Corps; however, external modifications will require a section 408 permit from the Corps.

The NAWS system will incorporate rural water systems from the All Seasons Water Users District, Upper Souris Water District, and North Prairie Water District. The project is slated to be completed by 2030, dependent on the receipt of adequate federal, state, and local funding. The Department of Water Resources will be proposing legislation to reconfigure the NAWS Advisory Committee. The proposed legislation will aim to include more affected stakeholders related to the NAWS Project. The estimated funding request for the 2023-25 biennium is \$77 million.

### **Committee Considerations**

Based on the testimony provided, the committee determined the state should continue to own, manage, and operate the NAWS Project until the project's completion.

### **Conclusion**

The committee makes no recommendation regarding its study of the NAWS Project.

### **REPORT FROM THE ONSITE WASTEWATER RECYCLING TECHNICAL COMMITTEE**

The committee received a report, pursuant to Section 3 of House Bill No. 1183 (2021), from the Onsite Wastewater Recycling Technical Committee regarding the status of the statewide technical guide and the committee's recommendations. Testimony indicated the Onsite Wastewater Recycling Technical Committee has met regularly since December 3, 2021, to fulfill the requirements of Section 23-35-02.3. The committee was informed bi-monthly meetings were held to establish a statewide technical guide for onsite wastewater recycling treatment technologies and sewage distribution technologies. The committee discussed standards and procedures for issuing an installer license, continuing education requirements for installer license renewal, and reasonable fees for issuing or renewing an installer license. The Onsite Wastewater Recycling Technical Committee recommended the creation of an onsite wastewater board to regulate wastewater installers in North Dakota. The board would be given authority to enforce the technical guide, issue licenses, collect fees, and recommend continuing education requirements for onsite wastewater installers. The Onsite Wastewater Recycling Technical Committee also recommends the board assume the duties of the North Dakota Plumbing Board in regard to the regulation of private sewage disposal systems under Chapter 43-18 and the Legislative Assembly appropriate \$200,000 to fund the newly created board for the 2023-25 biennium.

# 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, 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) and review any actions taken resulting from the performance evaluation report.

In addition to its statutory directives, the committee was charged with receiving the following four reports:

- A report from the Director of WSI, the Chairman of the WSI Board of Directors, and the audit firm selected by the State Auditor regarding the quadrennial performance evaluation of WSI, pursuant to Section 65-02-30.
- A biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03, pursuant to Section 65-03-05.
- An annual report from WSI on the status of WSI's current pilot programs to assess alternative methods of providing rehabilitation services and a summary of findings and recommendations for pilot programs completed within the previous 12 months, pursuant to Sections 65-01-19 and 65-05.1-06.3.
- A quarterly report from the Office of Administrative Hearings (OAH) and WSI on statistical information regarding results under the case processing standards and policies, pursuant to Section 54-57-09.

Committee members were Senators Scott Meyer (Chairman), JoNell A. Bakke, and Curt Kreun and Representatives Dan Ruby, Mary Schneider, and Greg Stemen.

Representative George Keiser served on the committee until his death on December 22, 2021.

## 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
2019-20	12	1

## Claims Review Procedure

Based on the protocol and application packet used during the 2019-20 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, the 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 is to be reviewed, the ombudsman meets with the Legislative Council staff to review the case summary and workers' compensation issues to be raised.
9. Upon receipt of these workers' compensation issues, the Legislative Council staff notifies a WSI representative of the identity of the injured employee who will appear 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 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 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 request to reopen her May 2009 WSI claim because WSI's medical consultant concluded there was no objective medical evidence indicating her 2009 work injury was the primary factor in the injured employee's 2020 right shoulder treatment.

### **Workforce Safety and Insurance Response**

The WSI representative reviewed Sections 65-05-01 and 65-05-35(1)(2), which provide the claimant bears the burden of proving any entitlements to benefits and a claim for benefits is presumed closed if WSI has not paid any benefit or received a demand for payment of any benefit for 4 years. If a claim is dormant for an extended period of time without treatment, the claim becomes difficult to assess. If a claim is dormant for 4 years or more, the claim is presumed closed. Clear and convincing evidence the work injury is the primary cause of the current symptoms is required to reopen a claim presumed closed due to dormancy. Workforce Safety and Insurance seeks objective medical evidence supporting whether a work-related injury is a compensable injury. According to the WSI representative, in the injured employee's situation, the medical consultant found no evidence the May 2009 work injury or job duties were the primary factor in the injured employee's 2020 right shoulder treatment or in her cervical spine condition.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- WSI's doctors may not have the injured employee's interests at the forefront because the doctors work for WSI.
- WSI should not be able to conclude a physician's opinion is not objective medical evidence when the examining specialist is a specialist in the medical field.
- WSI did not give weight to the opinion of the doctor who stated the condition was related to employment.
- The treating physician should not be designated statutorily as the primary physician because the treating physician may not be an expert in a particular medical area.

## **Second 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. The injured employee provided the following issues for consideration:

- Vocational rehabilitation plans may not consider an injured employee's physical abilities and pain adequately.
- The WSI process is not ideal for injured workers who cannot get back to work after their injury. The process was designed to protect WSI and employers, with no regard for the injured worker.
- WSI should have a program assisting permanently injured workers in finding employment.
- WSI should be an independent entity.

### **Workforce Safety and Insurance Response**

The WSI representative reviewed Section 65-05.1-01 pertaining to rehabilitation services. 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.

## **Third Claim**

### **Issues for Review**

The injured employee reported he filed a claim for a lumbar injury sustained from a slip and fall occurring at work in 2019. The injured employee was treated and was diagnosed with lumbar pain and contusion. Workforce Safety and Insurance accepted the injured employee's claim and paid the associated medical benefits. The injured employee was treated again in 2021 but WSI did not consider the medical treatment from 2021 part of the injured employee's 2019 lumbar spine injury. The injured employee reported the claim process was designed to protect WSI and employers with no regard for the injured employee.

### **Workforce Safety and Insurance Response**

The WSI representative reported Section 65-01-11 provides the claimant has the burden of proving by a preponderance of the evidence the claimant is entitled to benefits. Section 65-01-02 defines a compensable injury as an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings. Workforce Safety and Insurance's physician advisor completed a medical review on January 20, 2021, and opined there did not appear to be any physical impairment at that time and the current treatment in 2021 was not related to the 2019 work incident.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- The system could be improved to facilitate better communication between WSI and injured employees.
- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.
- 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.

## **Fourth Claim**

### **Issues for Review**

The injured employee reported she filed a claim for a slip and fall on the ice in 2018 while working. In March 2019, the injured employee reported severe pain from her groin and into the legs. In 2020, the injured employee was released to regular duty and WSI issued a notice of intent to discontinue benefits ending temporary total disability. In 2021, WSI issued a reapplication to the injured employee because she relayed a change in her restrictions. Workforce Safety and Insurance issued a notice of decision denying the reapplication on the basis the injured employee did not have a significant change or substantial worsening of the condition. The injured employee reported WSI should rely on the injured employee's medical provider's recommendations and if a local physician is not familiar with a disease or medical condition, WSI should make an immediate referral to a specialist.

### **Workforce Safety and Insurance Response**

The WSI representative reported Section 65-02-20 provides disability benefits are reinstated upon proof by the injured employee that the employee has sustained a significant change in the compensable medical condition. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a condition, but pain alone is not a substantial acceleration or substantial worsening. Section 65-05-08 provides a presumption may not be established in favor of any health care provider's opinion. Workforce Safety and Insurance must resolve conflicting medical opinions and in doing so WSI must consider factors, including the nature and extent of the treatment relationship, the amount of relevant evidence in support of the opinion, and whether the health care provider specializes in the medical issues related to the opinion. Workforce Safety and Insurance is a payor and does not treat or diagnose an injured employee.

### **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.
- An injured employee who believes a condition has undergone a substantial worsening can request a re-evaluation of the initial impairment rating and if the request is denied, the denial is appealable.

## **Fifth Claim**

### **Issues for Review**

The injured employee reported because of his work in a health care setting and continuous work-related coworker exposure, he became colonized with *Clostridium Difficile* Colitis and tested positive for SARS-CoV-2 (COVID-19). Workforce Safety and Insurance issued a notice of decision denying the injured employee's claim because the exposure, and required quarantine, were not the result of direct patient care. The injured employee reported it is challenging finding North Dakota attorneys to handle workers' compensation claims and asserted North Dakota should have more attorneys representing injured employees for a reasonable fee.

### **Workforce Safety and Insurance Response**

The WSI representative reported Section 65-01-02 excludes from the definition of a compensable injury ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases. The Governor's Executive Order 2020-12 required the injured employee to demonstrate the infection resulted from a work-related exposure.

### **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.

## **Sixth Claim**

### **Issues for Review**

The injured employee reported she suffered a lumbar sprain and strain in 2001, while working as a registered nurse while trying to reposition a patient. Workforce Safety and Insurance accepted the claim. In 2005 and 2006, the injured employee filed two new claims for the lumbar spine injury. Workforce Safety and Insurance viewed the new claims as an exacerbation of her 2001 injury and consolidated the new claim filings with the 2001 work injury claim. From 2013 until 2020, the injured employee experienced flare-ups of her lumbar spine injury and sought treatment under her WSI claim. An independent medical review indicated the injured employee's ongoing medical treatment and diagnoses were not related to her original work injury. The injured employee reported the lack of an adequate explanation in light of the issues brought to WSI's attention gives the impression the process is used as a pretext to eliminate injured employees from having claims accepted.

### **Workforce Safety and Insurance Response**

The WSI representative reported Section 65-01-02 provides a compensable injury is not only an injury by accident arising out of and in the course of hazardous employment but one that must be established by medical evidence supported by objective medical findings. Workforce Safety and Insurance follows a physician's treatment plan, recommendations, opinions, and diagnosis for purposes of accepting or denying claims and determining benefits. The physician determined the injured employee's new injury was related to natural body degeneration and was not related to her original work injury.

### **Committee Considerations**

Committee members considered the following issues 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.

## **Seventh Claim**

### **Issues for Review**

The injured employee reviewed his voluminous claim history and his entire file was provided to the committee for review. The injured employee provided the following issues for consideration:

- WSI should be more helpful in assisting injured employees through the claims process.
- WSI should not cherry-pick which medical provider opinions WSI accepts.
- WSI's claim and appeal process is unacceptable and difficult to navigate, which is why there are no attorneys in North Dakota willing to take a case against WSI.
- WSI should take the injured employee's opinion into consideration, not just the opinion of the treating physician or WSI's internal medical personnel.

## **Workforce Safety and Insurance Response**

The WSI representative reported:

- Six or seven attorneys in the state handle workers' compensation law cases. Those attorneys represent injured workers at hearings. An attorney shortage within the scope of workers' compensation law does not appear to exist in North Dakota.
- Section 65-01-02 provides a compensable injury is not only an injury by accident arising out of and in the course of hazardous employment but one that must be established by medical evidence supported by objective medical findings.
- Section 65-05-08.3 provides a presumption may not be established in favor of any health care provider's opinion. Workforce Safety and Insurance must resolve conflicting medical opinions and in doing so WSI must consider factors, including the nature and extent of the treatment relationship, the amount of relevant evidence in support of the opinion, and whether the health care provider specializes in the medical issues related to the opinion.

## **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 injured employee's attorney fees. The actual amounts reimbursed are specified within North Dakota Administrative Code and the amounts are reviewed and adjusted every other year.
- WSI's responses to injured employees may not be timely nor presented clearly or transparently enough.

## **Eighth Claim**

### **Issues for Review**

The injured employee reported he was working when he slipped in a parking lot, felt a tearing or pull in the left groin, and was diagnosed with an inguinal hernia. Workforce Safety and Insurance denied the claim because the physician advisor indicated the treating provider could not provide an objective reasoning for the hernia being a work-related incident. A secondary finding with the denial stated if it is later found the injured employee's employment is the cause of the hernia, workers compensation benefits remain denied because the injured employee did not seek treatment from the employer's designated medical provider. The injured employee reported workers are not taught workers' compensation law or protocol by their employers. It is unfair for injured employees to be held accountable for work injuries and claims when their employer does not provide them with a workers' compensation handbook or explain what the process is after a work accident occurs.

## **Workforce Safety and Insurance Response**

The WSI representative reported Section 65-05-28.2 provides during the first 30 days after a work injury, an employee of an employer that has selected a preferred provider under the section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and WSI may not pay for treatment by a provider that is not a preferred provider, unless a referral was made by the preferred provider. A provider that is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. The injured employee did not seek treatment from the employer's designated medical provider, nor did he select his own provider in writing as required under Section 65-05-28.2.

## **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- The treating physician should not be designated statutorily as the primary physician because the treating physician may not be an expert in a particular medical area.
- The system could be improved to facilitate better communication between the treating medical providers and WSI.

## **Ninth Claim**

### **Issues for Review**

The injured employee reported he filed a claim with WSI for a left shoulder injury that occurred in 2019. The injured employee had a prior left shoulder condition that predated the work injury. Since the work injury significantly worsened or accelerated the pre-existing condition, WSI accepted the claim and paid on a 50-percent aggravation basis. The injured employee reported his prior injury had completely healed with no limitations and his current claim should therefore

not have been deemed to be an aggravated claim. Workforce Safety and Insurance should deem a new injury as an aggravated claim only if the prior injury limits that bodily function at the time of the new injury.

### **Workforce Safety and Insurance Response**

The WSI representative reported WSI does not pay for pre-existing conditions if the conditions become symptomatic, but will pay if work substantially worsens or substantially progresses that underlying condition. The distinction is a clear delineation between what is covered by health insurance and what is related to an industrial incident. Section 65-05-15 provides in cases of a prior injury, disease, or other condition, known in advance of the work injury, which has caused previous work restriction or interference with physical function the progression of which is substantially accelerated by, or the severity of which is substantially worsened by, a compensable injury, WSI shall pay benefits during the period of acute care in full. The period of acute care is presumed to be 60 days immediately following the compensable injury, absent clear and convincing evidence to the contrary. Following the period of acute care, WSI must pay benefits on an aggravation basis. When an injured employee is entitled to benefits on an aggravation basis, WSI pays the costs of vocational rehabilitation, travel, other personal reimbursement for seeking and obtaining medical care, and dependency allowance on a 100-percent basis.

### **Committee Considerations**

Committee members considered the following issues 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.
- Since every employee will have some degree of degeneration, WSI should not be able to deny responsibility by claiming a pre-existing condition.

## **Tenth Claim**

### **Issues for Review**

The injured employee reported his 2008 motor vehicle accident caused anxiety, depression, and posttraumatic stress disorder. Workforce Safety and Insurance denied his claim for coverage for mental health conditions because the injured employee's psychiatric conditions predated his 2008 work injury. The injured employee reported WSI did not consider the posttraumatic stress his work injury caused him.

### **Workforce Safety and Insurance Response**

The WSI representative reported Section 65-01-02 defines a "compensable injury" to include a mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least 50 percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury. A compensable injury does not include a mental injury arising from mental stimulus.

### **Committee Considerations**

Committee members considered the following issues raised by the injured employee:

- The issues of mental injury and mental health conditions arising from or being related to physical work injuries are issues constituents commonly raise with legislators.
- WSI typically denies benefits for the treatment of depression and other mental injuries.

## **Eleventh Claim**

### **Issues for Review**

The injured employee provided the following issues for consideration:

- The laws pertaining to WSI are difficult to read and understand.
- WSI should have been more responsive to the injured employee when she contacted WSI with questions and concerns.

### **Workforce Safety and Insurance Response**

The WSI representative reviewed Section 65-01-16 which provides WSI may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. An injured worker has 45 days from the day the notice of decision was mailed by WSI in which to file a written request for reconsideration.

## **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.

## **WORKFORCE SAFETY AND INSURANCE STATUS UPDATES**

To keep apprised of current events at WSI, the committee received status updates on topics related to WSI trends, initiatives, and 2021 legislation relating to the state's workers' compensation system.

### **Trends and Initiatives**

The committee received an overview of WSI trends and initiatives. The overview included WSI's performance metrics for the 2021 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 WSI accommodated increased workloads during the peak boom years by increasing the number of temporary employees. As of June 30, 2015, WSI had the equivalent of 32 temporary employees. As workloads decreased, this number was reduced to 1.8 in Fiscal Year 2021, a reduction of 94 percent. With a state population of around 780,000 residents, WSI covers a workforce of 386,414. There are ongoing developments of WSI's claims and policy system (CAPS). The goal of CAPS is to replace WSI's core business system software with web-based technology to improve customer service, enhance system maintainability, and provide enhanced reporting and accessibility to information. A key initiative for WSI is the continuation of the myWSI extranet enhancement project. The goal of myWSI is to create a secure, self-service portal for external customers and stakeholders to view, update, submit, and retrieve information relating to interactions with WSI.

### **Legislative Package**

The committee received a status report on the implementation of 2021 legislation relating to workers' compensation. The legislation addressed the extension of injured worker and employer appeal time frames from 30 to 45 days; payment of attorney fees for an employer involved in a jurisdictional dispute in another state; allowing WSI to retain counsel on both a contingent and hourly basis; providing a compensable injury does not include injuries caused by the use of recreational marijuana; establishing duration limits and maximum payable dosing limits for opioid therapies; establishing duration limits for benzodiazepines; and adding physical therapists to the definition of health care provider.

## **REPORTS**

### **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 Outreach 10-hour Online Training programs. The committee received data about each program, including the continuing safety appropriation amount by biennium, beginning in 2005.

### **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.

### **Injured Worker Assistance Program**

The committee was informed the injured worker assistance program was implemented as a pilot program in 2015 and provides counseling services for injured employees and their family members. The program provides up to

six sessions with a behavioral health counselor contracted by WSI and up to four sessions with a financial professional contracted by WSI. Program participation is voluntary and completely confidential. Program services are provided independent of liability determinations, recognizing psychological, social, and economic stressors may impact physical recovery timetables. The pilot program status of the injured worker assistance program ended on January 1, 2022, after which the program was integrated into regular use.

### **Computer Pilot Program**

The committee was informed WSI implemented the computer pilot program to provide access and opportunity to injured employees who do not have a home computer or the financial means to obtain one and are limited to access of public use computers, either by proximity or physical restriction due to the work injury. Under the program, WSI will provide an identified injured employee \$1,200 to purchase a laptop computer, warranty, software, maintenance, and Internet access. The program provides an injured employee with an opportunity to develop additional skills for returning to employment and the ability to begin enhancing skills earlier in the recovery process if the injured employee's restrictions preclude the individual from traveling to a public computer.

### **Alternative Neutral Evaluation Pilot Program**

The committee was informed the alternative neutral evaluation pilot program was implemented in October 2021, and provides for a Bismarck physician, trained in orthopedic medicine, to conduct a neutral medical evaluation of an injured employee in claims containing conflicting medical opinions. Under the program, the evaluator issues an opinion regarding the medical issue which is binding on WSI and the injured employee. To be eligible for the program, the claim must contain conflicting medical opinions, relate to an injury that can be best evaluated by an orthopedic specialist, and be at a point in the adjudication process at which a decision to accept or deny the claim has not been made. If the injured employee wants to participate in the program, the employee signs an agreement letter acknowledging the binding nature of the program. Workforce Safety and Insurance will pay up to \$500 in attorney fees and \$150 in costs, for an attorney selected by the injured employee to review the agreement letter and provide legal advice about participation in the program. The program has received 10 referrals. Of the 10 referrals, 5 neutral evaluations have been conducted. All 5 evaluations resulted in WSI accepting the claim. Four injured employees declined participation in the program, and 1 injured employee resolved the medical dispute through a stipulated settlement. Program costs have totaled \$13,700.

### **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 2022, 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 that as a result of OAH's response and goal of meeting the 6-month rolling average of a 215-day limit, the average number of days from OAH receiving a file to when a hearing is held between January 1, 2022, and June 30, 2022, was reduced to a range of 175 to 189 days. Between January 1, 2022, and June 30, 2022, the average number of days from when an administrative hearing is held to when a decision is issued was reduced to a range of 32 to 59 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.

## **QUADRENNIAL PERFORMANCE EVALUATION**

### **Background**

Section 65-02-30 requires the Director of WSI to request the State Auditor to select a firm to complete a performance evaluation every 4 years of the functions and operations of WSI during that evaluation period. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The evaluation report and any action taken must be presented to the committee. The committee may select up to four elements to be evaluated in the performance evaluation and is required to inform the State Auditor of the selected items to be evaluated. The State Auditor is required to include the elements selected by the committee in the performance evaluation. The State Auditor also may select up to four elements to be evaluated.

At the beginning of the interim, in accordance with Section 65-02-30, the State Auditor selected two elements to be included in the performance evaluation while the committee did not select any elements to be included. The State Auditor selected whether COVID-19 WSI claims were evaluated and processed during the appropriate period of time according to Executive Orders 2020-12, 2020-12.1, and 2020-12.2; and whether WSI identifies recurring incidents in certain industries or with certain employers and reaches out to assist those employers or industries.

## Elements

The State Auditor awarded the contract for the performance evaluation to Sedgwick Claims Management Services, Inc. (Sedgwick). The WSI performance evaluation request for proposals provided the following two elements be addressed:

1. COVID-19 claims management practices subject to three executive orders issued by the Governor. This element included:
  - a. A review of a sample of COVID-19 claims to determine if claims occurred, were assessed, and were processed during the appropriate period according to the Executive Orders issued by the Governor.
  - b. A review of Executive Orders 2020-12, 2020-12.1, and 2020-12.2.
  - c. An understanding of each Executive Order and the employee group subject to those Executive Orders.
  - d. An assessment of WSI's management of COVID-19 cases submitted by North Dakota employers during the covered period of the Executive Orders.
2. Industry and employer assistance. This element included:
  - a. Practices tied to the identification of recurring incident trends pertaining to both industries and individual employers, various analyses and reports provided by WSI, training and education, and trends among 1<sup>st</sup> year employees.
  - b. A review of 2019, 2020, and 2021 claims data and a comparison of the data to existing reports by WSI.
  - c. Observation of trends among industry groupings for the purpose of evaluating safety efforts.

## Performance Evaluation Recommendations

For the two elements of the performance evaluation, the report prepared by Sedgwick included recommendations identified by priority level, WSI's response to the recommendations, and Sedgwick's replies to WSI's responses. The material in this report is limited to the recommendations and does not include WSI's responses or Sedgwick's replies.

### COVID-19 Claims

**Recommendation 1.1: Low Priority.** Sedgwick recommends clear documentation standards for each employer be developed so more detailed evidence is provided in cases of denied claims when an employer is in a position of trying to evaluate whether a workplace exposure to COVID-19 occurred and the employer concluded no known workplace exposure had occurred.

### Industry and Employer Assistance

**Recommendation 2.1: Medium Priority.** Sedgwick recommends developing more initiatives specific to the high-risk industry groups, such as hospitals, restaurants, schools, automotive dealers, and trucking and hauling.

**Recommendation 2.2: Low Priority.** Sedgwick recommends evaluating the viability of creating and maintaining webpages dedicated to specific high-risk industries. The webpage would be a central place to access any industry-based resources, such as local associations, alliances, events, organizations, safety tip sheets, and data.

**Recommendation 2.3: Low Priority.** Sedgwick recommends increasing awareness of the value of applying leading indicator methodologies within their safety practices, including considering providing additional educational materials and training sessions about indicators or promoting the topic of leading and lagging indicators as a new outreach initiative.

**Recommendation 2.4: High Priority.** Sedgwick recommends establishing a threshold for experience ratings which triggers loss control employer outreach throughout the policy period. This recommendation includes comparing the premium to total paid claim amount quarterly. For employers found to have claim expenses equating 60 percent of their premium or greater, consider establishing that point as a threshold for a safety consultant to reach out with a trend analysis and recommend loss control objectives to prevent further escalation of losses.

**Recommendation 2.5: High Priority.** Sedgwick recommends WSI consider establishing a process in Injury Services requiring patterns of injuries and illnesses be reported to the safety consultant covering the employer's region.

**Recommendation 2.6: High Priority.** Sedgwick recommends ensuring claims staff is aware of and following the set criteria for generating a C173 and sending it to loss control promptly. This recommendation would allow safety consultants to conduct accident investigations and root cause analyses as soon as possible after the incident occurs and ensure employers can mitigate risks as soon as possible.



**Recommendation 2.7: Low Priority.** Sedgewick recommends providing employers education about calculating and comparing total recordable incident rates to industry averages provided by the Federal Bureau of Labor and Statistics.

**Recommendation 2.8: High Priority.** Sedgewick recommends amending reports for inclusion of the Full Cause Category and Cause Code so clarity is achieved. For example, "Cut, Puncture, Scrape Injured by" is one of the broad categories, and "Objects Being Lifted or Handled" is one of the detailed codes that fall within that category. Having both portions of the code where appropriate can provide a more complete picture of how the injury occurred.

**Recommendation 2.9: Medium Priority.** Sedgewick recommends recording the time as "unreported" rather than 12:00 a.m. when a first report of injury is received without time of injury information. This recommendation would allow the pie charts included on the Employer Trend Analysis to show separate categories for unknown times versus those occurring between 12:00 a.m. and 12:59 a.m.

**Recommendation 2.10: Medium Priority.** Sedgewick recommends increasing and enhancing outreach to nonprogram participants, including evaluation of the loss control results within the employer survey which comment on responses from specific premium groups, and factor in loss control objectives as well as the numbers comparing program participants versus nonparticipants.

**Recommendation 2.11: Medium Priority.** Sedgewick recommends conducting annual training program reviews or needs assessments to help measure whether organizational goals are being met, quality control is maintained, and the ever-changing needs of end-users continue to be accommodated. This recommendation includes considering the inclusion of a focus group, surveys, a review board or steering committee, or a formal needs assessment specific to training, and modifying the existing employer survey to ensure the context, content, and results of the survey questions clearly tie to loss control objectives, and the process incorporates control sheets for tracking changes implemented in response to survey results.

**Recommendation 2.12: Medium Priority.** Sedgewick recommends developing a means for system users to submit program or course evaluations.

**Recommendation 2.13: High Priority.** Sedgewick recommends re-evaluating the objectives of the Safety Management Program and the Safety Orientation System Program and how the programs are communicated. Then, relaunch and market each with more emphasis.

**Recommendation 2.14: Medium Priority.** Sedgewick recommends either extracting information about injuries within the 1<sup>st</sup> year on the job into a separate report for employers to lend greater emphasis on the loss trend and as part of an overall policyholder initiative to reduce losses for workers within their 1<sup>st</sup> year on the job; or modifying the employer dashboard to combine claim counts and costs for injuries occurring the 1<sup>st</sup> year onto one page to help reduce the report size and combine like data.

**Recommendation 2.15: Medium Priority.** Sedgewick recommends adding information about injuries based on length of service to the annual WSI Detail Claims & Injury Characteristics Report.

## **COMMITTEE CONSIDERATIONS**

### **Quadrennial Performance Evaluation**

The committee received testimony indicating since 2006, there have been five performance evaluations conducted by an outside firm with expertise in workers' compensation and industry standards. The cost of the last five performance evaluations has ranged between \$91,290 and \$284,939, with an average cost of approximately \$187,200. The costs of the quadrennial performance evaluation are paid from the WSI fund.

The committee considered a bill draft to repeal the quadrennial performance evaluation of WSI. Some committee members indicated the cost of the quadrennial performance evaluation is excessive, considering WSI is subject to an annual financial audit; WSI has an Internal Audit Department that plans, directs, and completes internal audits and compliance reviews; and WSI is statutorily subject to review at the discretion of the Legislative Audit and Fiscal Review Committee and the State Auditor. Other committee members highlighted the benefits of having a neutral third-party nongovernmental entity audit WSI and provide the committee with recommendations for improvement.

### **Recommendation**

The committee recommends a bill draft [\[23.0003.01000\]](#) to repeal the quadrennial performance evaluation of WSI.

### **Reports**

The committee considered a bill draft to remove the requirement that WSI provide various reports to the committee. The committee discussed whether the reports the committee is statutorily required to receive from WSI and OAH are

needed considering the information included in the reports are provided to standing committees during the legislative session, can be provided upon request from the two agencies, and can be found on the two agencies' webpages. Some committee members indicated the interim reports provide a helpful status update on WSI programs.

### **Recommendation**

The committee recommends a bill draft [\[23.0049.01000\]](#) to remove the requirement that WSI provide the committee reports on current and completed pilot programs and compiled data relating to safety grants. The bill also removes the requirement that WSI and OAH provide the committee quarterly updates on the statistical information regarding results under the case processing standards and policies.

### **Workers' Compensation Review Committee**

The committee discussed whether the committee serves a useful purpose and considered a bill draft to repeal the committee.

Some committee members indicated the committee was created statutorily in 2005 and has recommended numerous beneficial legislative changes. However, over the last decade, fewer injured employees have volunteered to have their claims reviewed and fewer bill drafts have been recommended by the committee at the end of each interim. The committee was created to remedy reoccurring problems experienced by injured employees who went through the claims process and it appears most reoccurring issues have been resolved. Proponents of the bill draft pointed out no other state agency has a statutory legislative committee to review individual citizen criticisms of the agency and examine thoroughly the criticism. They contended legislative resolution of agency criticism could be achieved faster and in a more cost-effective manner by citizens contacting their district legislators and voicing the need for change.

Some committee members indicated the committee has achieved beneficial changes for the citizens of North Dakota but there remains work for the committee to do. They contended the criticisms voiced by injured employees each interim highlights the need for the committee.

### **Recommendation**

The committee recommends a bill draft [\[23.0048.01000\]](#) to repeal the Workers' Compensation Review Committee.

# STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE MANAGEMENT FOR THE 2021-22 INTERIM

The following table identifies the bills and resolutions considered by the Legislative Management for study during the 2021-22 interim under the authority of North Dakota Century Code (NDCC) Section 54-35-02:

Bill or Resolution No.	Subject Matter (Committee)
1003 § 24	Study the feasibility and desirability of consolidating attorney and legal-related positions in state government. The study must include an analysis of the number of attorney and legal-related positions in state government, the agency to which the positions are assigned, the type of work performed by the positions, and any efficiencies that may be gained through the consolidation of these positions into the Attorney General's office. The study must include consultation with the Attorney General and any agency with attorney and legal-related positions in state government for the 2021-23 biennium. <b>(Government Administration Committee)</b>
1003 § 27	Study the economic and societal impacts of gambling addiction in the state. The study must include a review of the trend of gambling addiction since the expansion of electronic pull tab gambling in the state, state funding provided for gambling addiction and disorder prevention and treatment, support programs for individuals and families affected by gambling addiction, and use of net proceeds for eligible organizations. <b>(Judiciary Committee)</b>
1009 § 22	Study the North Dakota Beef Commission, including its operations and the selection of commission members. <b>(Agriculture and Natural Resources Committee)</b>
1010 § 8	Study medication optimization. The study must include a review of the implementation of clinical pharmacist-led medication optimization programs in individual, large group, and small group plans, including provider credentialing, billing standards and procedures, providing standards of care, patient monitoring, consistent documentation of outcomes and efforts related to de-prescribing, and structuring an outcome reporting system for medication optimization programs. The study also must include a review of changes necessary to state laws and administrative rules to implement effective medication optimization. The Insurance Commissioner shall assist the Legislative Management with the study and identify and request the participation of stakeholders needed to complete this study. The Insurance Commissioner shall collect and provide to the Legislative Management the data needed to complete the study. The data provided by stakeholders, not otherwise publicly disclosed, must be considered confidential pursuant to Section 44-04-18.4. <b>(Health Care Committee)</b>
1012 § 5	<b>(Required)</b> Study the acute psychiatric hospitalization and related step-down residential treatment and support needs of individuals with mental illness. The Legislative Management shall create an Acute Psychiatric Treatment Committee consisting of eight members to conduct the study. The Legislative Management Chairman shall designate the committee Chairman and Vice Chairman. The committee must complete the study by October 1, 2022. As part of the study, the committee shall gather input from stakeholders and other groups, including private hospitals, the Department of Human Services, and mental health advocates. The study must review options for a long-term plan for acute psychiatric hospitalization and related step-down residential treatment and support needs in the state and short-term options during the next 2 bienniums to contract with private provider acute psychiatric care facilities to provide treatment services in four or more cities in the state, workforce needs of such specific locations, and options to replace the existing State Hospital facility with one or more treatment facilities focused on forensic psychiatric evaluation and treatment. The committee, with the approval of the Legislative Management, may obtain consulting services to determine the total number of acute care beds needed in the state and to develop recommendations for private provider contracts, treatment requirements and outcome measures, locations in the state, including private and public facilities, the future use of facilities at the State Hospital campus, including the LaHaug Building, and other items identified in subsection 3. The consulting services may also develop conceptual drawings for recommendations for a new State Hospital. <b>(Acute Psychiatric Treatment Committee)</b>
1015 § 43	Study space needs of the executive, judicial, legislative branches, and the Ethics Commission. The study must include: a review of each branch's employee work location policies; an assessment of the space needs of each branch to fulfill their constitutional and statutory responsibilities; an evaluation of state agency leases of space from private and other governmental entities in Bismarck, amounts being paid for these leases, and state agency rental payments being made to the Office of Management and Budget from special and federal funds; consideration of the feasibility and desirability of the Office of Management and Budget charging rent to agencies receiving funding from the general fund; and the development of a space utilization plan for the Capitol complex. The study must include consideration of whether adequately sized committee rooms, appropriate accommodations under the federal Americans with Disabilities Act, and flexible meeting areas are available. <b>(Government Administration Committee)</b>
1015 § 44	Study the classified state employee compensation system, including a review of the development and determination of pay grades and classifications. <b>(Government Finance Committee)</b>

<b>Bill or Resolution No.</b>	<b>Subject Matter (Committee)</b>
1015 § 45	Study the fiscal impact of providing a sales tax exemption for raw materials critical to the manufacturing process used to support biologic product generation, product impurity removal, chemical or physical product alteration, and analysis of in-process to final deliverable products. <b>(Taxation Committee)</b>
1020 § 13	Study, with input from the State Water Commission and from stakeholders of the Red River Valley Water Supply Project, the management and operation of the Red River Valley Water Supply Project. The study must include consideration of the appropriate entity to own, manage, and operate the project. <b>(Water Topics Overview Committee)</b>
1020 § 14	Study, with input from the State Water Commission, the Northwest Area Water Supply Project. The study must include consideration of an entity, other than the state, to own, manage, and operate the project. <b>(Water Topics Overview Committee)</b>
1031 § 1	<b>(Required)</b> The Legislative Management shall assign to one or more interim committees a study of selected state agency fees as provided in Section 1 of House Bill No. 1031 (2021). <b>(Government Finance Committee)</b>
1036 § 1	Study the juvenile justice process and collaborate with the Commission on Juvenile Justice. The study must include a review of the effective intervention, resources, and services for children. <b>(Judiciary Committee)</b>
1111 § 1	<b>(Required)</b> Shall study competency-based learning and schools participating in innovative education programs. The study may include a review of the progress of schools and districts in the state which have received waivers under North Dakota Century Code Section 15.1-06-08.1 to participate in innovative education programs under Section 15.1-06-08.2; waivers to participate in innovative education programs that incorporate competency-based learning initiatives; the schools and districts participating in innovative education programs; and the schools and districts that have received waivers to participate in innovative education programs, the contents of the implemented innovative education programs, best practices, and whether the competency-based learning initiatives implemented under the innovative education programs can be duplicated and expanded for implementation statewide. <b>(Education Policy Committee)</b>
1159 § 1	Study natural gas and propane infrastructure development in the state. The study must include consideration of the current infrastructure available for natural gas and propane, challenges related to the development of natural gas and propane infrastructure, community needs for natural gas and propane infrastructure, and a cost-benefit analysis of any state incentives to encourage the development of natural gas and propane infrastructure. <b>(Energy Development and Transmission Committee)</b>
1209 § 1	<b>(Required)</b> Develop a plan for new hires under the Public Employees Retirement System main system to participate in the defined contribution plan and to close the defined benefit plan to new entries effective January 1, 2024. Upon approval of the Chairman of the Legislative Management, the study may use the services of a third-party contractor to assist in the study. <b>(Retirement Committee)</b>
1254 § 1	<b>(Required)</b> Study the types of spousal support ordered by the district court and the desirability and feasibility of providing statutory guidance for awards of spousal support. The study must include input from practicing attorneys in the area of family law and the division of child support. The study must include a review of the frequency and duration of spousal support awards that are entered in the state. <b>(Judiciary Committee)</b>
1380 § 6	<b>(Required)</b> During the 2021-22 interim, the Legacy Fund Earnings Committee is created and shall study potential uses of legacy fund earnings, including the use of earnings to provide tax relief, research and technological advancements, innovation, economic growth and diversification, and workforce development. The committee may consider input from representatives of economic development entities, agricultural organizations, research entities, the innovation loan fund to support technology advancement committee, workforce development entities, higher education institutions, and the Parks and Recreation Department. As part of the study, the committee shall consider the establishment of a statutory committee to award grants for university research programs and workforce enrichment initiatives; define the use of university research, innovation, and workforce enrichment funding that may include efforts to stimulate economic activity across the state through innovation of new technology, concepts, and products; to promote job creation and career and wage growth; to enhance health care outcomes; and to provide experiential learning opportunities for students; and develop reporting requirements for entities receiving funds from the clean sustainable energy fund and from grants awarded for university research, innovation, and workforce enrichment initiatives. <b>(Legacy Fund Earnings Committee)</b>

**Bill or  
Resolution No.**

**Subject Matter (Committee)**

- 1388 § 14 Study K-12 school funding, including transition minimum reduction impacts to reorganized and consolidated school districts. The study must include a review of school districts that have multiple buildings in the district and districts that have built a new building without using traditional bonding methods as a result of a multidistrict reorganization; an analysis of high-cost students, including students who are high cost due to special education needs, medical reasons, agency placements, or any other reasons that increase the cost to educate the students beyond the state threshold; an ongoing review of the impacts of school districts that are off of the funding formula as they transition onto the formula; an analysis of human resource allocation and the duties and needs in elementary and secondary school buildings with a targeted focus on student academic health, behavioral health, and social and emotional health; and a review of student performance data relevant to students participating in virtual learning. **(Education Funding Committee)**
- 1397 § 1 **(Required)** Shall develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. **(Redistricting Committee)**
- 1455 § 2 Study the need, cost, effect, and appropriate process for bonding and ensuring reclamation of coal conversion facilities. The study must include an examination and assessment of the methods and amounts of financial assurance and schedules, the interaction of economics and the statutes, rules, and policies relating to the remaining useful life and early retirement of coal conversion facilities, the role of the Public Service Commission in all electrical generation retirement, and the appropriate involvement of the public and local communities and political subdivisions in the retirement process. The study also must evaluate the effectiveness of government programs and incentives relating to energy production, reliability, and the state's role in that process. **(Energy Development and Transmission Committee)**
- 1465 § 3 Study health insurance networks, including narrow networks. The study must include consideration of the use and regulation of broad and narrow networks in the state by individuals and employers, the sales and marketing of broad and narrow networks, opportunities for consumer choice-of-provider, and premium differentials among states with choice-of-provider laws; a review of legislative and court history regarding the impact of choice-of-provider laws on exclusive provider organizations and preferred provider organizations and how choice-of-provider laws apply to risk-pooled health plans regulated by the federal Employee Retirement Income Security Act of 1974; the impact of the consolidation of the health care market on consumer cash prices, insurance plan deductibles and premiums prices, and consumer options; a comparison of health maintenance organizations provider network designs and other health insurer provider network designs; a review of how vertical integrated networks utilize HMO plans; and a comparison of premiums of health benefit plans offered in the individual and small group markets in relation to the provider network design associated with those plans along with the growth of value-based purchasing. **(Health Care Committee)**
- 1470 § 1 Study the behavioral health needs of incarcerated adults. The study must consider the behavioral health needs of incarcerated adults, including access, availability, and delivery of services. The study also must include input from stakeholders, including representatives of law enforcement, social and clinical service providers, educators, medical providers, mental health advocacy organizations, emergency medical service providers, tribal government, state and local agencies and institutions, and family members. **(Acute Psychiatric Treatment Committee)**
- 1494 §1 Study the recruitment, retention, turnover, and training of law enforcement and correctional officers employed by state agencies and political subdivisions. The study may include a review of current and historical rates of retention and turnover, the training and professional development offered and required of law enforcement and correctional officers, and an analysis of the compensation and benefits of law enforcement and correctional officers employed by state agencies, political subdivisions, and comparable positions in other states within the region. **(Government Finance Committee)**
- 2003 § 25 **(Required)** Study higher education student affordability, including all forms of financial assistance available for students enrolled at institutions of higher education in the state. The study must include a review of available scholarships, student loan programs, waivers, grants, and any other forms of student financial assistance available for students enrolled at institutions of higher education in the state. The study must also include a review of the eligibility requirements and other criteria relating to each program, and their impact on the financial cost and utilization of each program. **(Higher Education Committee)**
- 2003 § 27 Study the higher education funding formula, including instructional program classification factors. **(Higher Education Committee)**
- 2021 § 13 Study the state government information technology budgeting and appropriations process. The study must include a review of the current process and the feasibility and desirability of providing a general fund appropriation to the Information Technology Department rather than providing general fund appropriations to state agencies to pay the Information Technology Department for information technology services. The study must include consideration of any cost or cost-savings that may result and any transparency benefits of the potential budgeting and appropriation changes. **(Government Finance Committee)**

<b>Bill or Resolution No.</b>	<b>Subject Matter (Committee)</b>
2021 § 14	Study the effectiveness, efficiency, cost, and any cost-savings of the 2019-21 biennium and 2021-23 biennium information technology unification initiatives and the feasibility and desirability of continuing these initiatives. The study must include a review of changes in fees, services, operations, processes, and systems. <b>(Information Technology Committee)</b>
2021 § 15	Study costs incurred by the Information Technology Department to deliver core technology services and cybersecurity services to state agencies and political subdivisions. The study must consider the feasibility and desirability of political subdivisions paying their share of the cost of these services. <b>(Information Technology Committee)</b>
2023 § 3	Study funding sources for the budget of the Racing Commission. The study must include consideration of the feasibility and desirability of changing the Racing Commission to a special funds only budget and the effect on general fund revenues. <b>(Government Administration Committee)</b>
2036 § 1	<b>(Required)</b> Shall continue the 2019-20 interim study of access to public and private lands for hunting, trapping, fishing, and related issues. The study must include evaluation of the electronic land access database and application developed during the 2019-20 interim and expansion of the database and application to all counties in the state. <b>(Natural Resources Committee)</b>
2086 § 25	<b>(Required)</b> Study issues related to the Department of Human Services and human service zones employee compensation. The study must include consideration of total state employee and human service zone team members compensation, including wages and salaries, annual leave, pay grades, classification, disaster or emergency services volunteers' leave, employee assistance program benefits, family and medical leave, funeral leave, holidays, hours of work, administrative leave, jury and witness leave, leave without pay, the merit system, military leave, overtime compensation, retirement benefits, health insurance benefits, severance pay, sick leave, benefits for temporary employees, and time off to vote; health insurance benefits, including the availability of health savings accounts, self-insurance, healthy lifestyle incentives, and the appropriateness of the human service zones' current health insurance benefits; compensation equity between the Department of Human Services, other state agencies, human service zones, and the market; within human service zones; within the Department of Human Services; and between human service zones; the feasibility and desirability of implementing compensation equity. <b>(Human Services Committee)</b>
2140 § 3	Study the professional student exchange program. The study must include the number of program participants enrolled in each discipline, the tuition support provided for students enrolled in each discipline, the rate at which students participating in the program return to the state, the procedures necessary to implement a payback provision and their associated costs, an appropriate grace period to allow program participants to return to the state, and the educational disciplines to which the payback provision should be applied. <b>(Higher Education Committee)</b>
2161 § 2	Study the implementation of expanded behavioral health services, including Section 1915(i) waiver implementation, capacity and utilization of the State Hospital, a behavioral health bed management system, and implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by the Human Services Research Institute. <b>(Acute Psychiatric Treatment Committee)</b>
2212 § 1	<b>(Required)</b> Study prescription drug pricing, importation, reference pricing, and the role pharmacy benefit managers play in drug pricing. The study must include input from the Public Employees Retirement System, Workforce Safety and Insurance, the Insurance Commissioner, the State Board of Pharmacy, prescription drug wholesalers in Canada, and the public. <b>(Health Care Committee)</b>
2217 § 1	Study deductions for postproduction costs under oil and gas leases. 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; 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, and the Attorney General's office; and an analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies and the infrastructure necessary to enhancing oil and natural gas value. The study may include consideration of the desirability and feasibility of expanding the use and market access of natural gas, including value-added energy opportunities within the state. <b>(Energy Development and Transmission Committee)</b>

**Bill or  
Resolution No.**

**Subject Matter (Committee)**

- 2256 § 1 **(Required)** Study state and federal laws and regulations and services relating to the care and treatment of individuals with developmental disabilities and individuals with autism spectrum disorder. The study must include a review of the state's existing programs to identify potential pathways for individuals who have a developmental disability and individuals who have an autism spectrum disorder but do not meet the eligibility criteria for existing programs; gap identification with programmatic recommendations identifying potential strategies to address the gaps, and potential federal and state funding sources, including the federal Medicaid 1915(i) state plan amendment; efforts and services offered by other states, including the planning and implementation process for any new or modified programs; the impact of implementation and expanding of programs to address service gaps, including the number of individuals impacted, cost, and timeline for implementation; and the elimination of the Autism Spectrum Disorder Task Force, including contracting with a private, nonprofit entity that does not provide autism spectrum disorder services to facilitate and provide support services to the Autism Spectrum Disorder Task Force. In conducting the study, the Legislative Management shall contract with a third party. **(Human Services Committee)**
- 2258 § 1 Study, in collaboration with the Commission on Juvenile Justice, the necessity of licensing shelter care programs for runaway, homeless, and former foster care youth and the ability of these youth to access temporary shelter. The study must include a review of the current barriers, effective intervention, and necessary resources and services. **(Judiciary Committee)**
- 2282 § 1 **(Required)** Shall study the membership of the Board of University and School Lands and the membership of the Industrial Commission. The study must include consideration of potential conflicts of interest relating to the memberships, possible changes to the composition of the memberships of the Board of University and School Lands and the Industrial Commission, and possible changes to Article IX of the Constitution of North Dakota. **(Judiciary Committee)**
- 2299 § 1 Study the desirability and feasibility of providing a credit against the purchase of a motor vehicle in an amount not to exceed the total amount the person received for the private sale of the vehicle being replaced for purpose of calculating the motor vehicle excise tax. The study must include a review of the current law applied to credits for trade-ins, motor vehicle sale industry practices, vehicles of a certain age, and the potential fiscal and technological impact on the state. The study also must consider the potential for tax fraud, the effect on child support collections, and implications regarding consumer protection. The study also must include input from the Tax Commissioner and Department of Transportation. **(Taxation Committee)**
- 2332 § 2 Study criteria for alternative teacher licensure. **(Education Policy Committee)**
- 2336 § 1 Study the occupational boards that address mental health and behavioral health issues which may include the State Board of Psychologist Examiners, Board of Addiction Counseling Examiners, Board of Counselor Examiners, Education Standards and Practices Board, North Dakota Board of Social Work Examiners, and North Dakota Marriage and Family Therapy Licensure Board. The study must include a review of the rules adopted by the boards and consideration of the frequency with which the rules are reviewed, whether there are barriers to practice and barriers to admission of foreign practitioners, and whether there is adequate training for board members and executive directors of these boards. **(Acute Psychiatric Treatment Committee)**
- 3009 Study provisions of the North Dakota Century Code relating to compulsory school attendance, including a comparison of compulsory school attendance laws in other states. **(Education Policy Committee)**
- 3013 Study issues relating to employment restrictions in public assistance programs. **(Human Services Committee)**
- 3014 Study solutions to provider and end-user barriers to access to and utilization of telehealth services in this state. **(Health Care Committee)**
- 3015 Study the feasibility and desirability of implementing a community health worker program, including recommendations regarding a definition of a community health worker, the scope of work of a community health worker, the infrastructure for training of community health workers, the development of a community health worker certification process and related training curriculum and continuing education requirements, a strategy for community health worker services being Medicaid-reimbursed services, and private insurers' use of community health workers. **(Health Care Committee)**
- 3019 Study the fiscal and safety impacts of United States Fish and Wildlife Service easements in North Dakota on the Department of Transportation, Department of Agriculture, and counties. **(Agriculture and Natural Resources Committee)**
- 3021 Study the factors contributing to the nation's current firearm and ammunition shortage and the impact the shortage has had on the quality of life for North Dakota citizens. The Legislative Management shall develop a plan of action to resolve the state's current firearm and ammunition shortage. **(Judiciary Committee)**

**Bill or  
Resolution No.**  
3035

**Subject Matter (Committee)**

Study statutes governing career and technical education, including statutes in Chapter 15-20.1 providing for the powers and duties of the State Board of Career and Technical Education, reciprocity with other states, cooperation with federal agencies, funding, reimbursement to institutions, gifts, reporting requirements, grants for innovation, elementary school entrepreneurship programs, career development certifications, career advisers, accessibility, impacts on students, the impact of additional career and technical education center student transportation on student transportation costs, and programs of study. **(Education Funding)**

3043

Study the amount, type, cost, and occupancy of property leased by the state or any state agency since January 1, 2018. The study must include a determination of the individuals who own the property leased by the state or a state agency, including the members of a corporation, partnership, or any other type of entity that owns property leased by the state or a state agency, whether any statewide elected or appointed official should be restricted from owning any property leased by the state or state agency under the direction of the state agency, and whether a legislator should be prohibited from voting on appropriation bills for agencies that lease property from the legislator. **(Government Administration)**

**NDCC Citation**

**Subject Matter (Committee)**

- 4.1-01-11 Receive report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities. (Agriculture and Natural Resources Committee)
- 4.1-01-21.1(8) Receive a biennial report from the Federal Environmental Law Impact Review Committee. (Agriculture and Natural Resources 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 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. (Higher Education 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. (Higher Education Committee)
- 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 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)
- 15-11-40 Receive a report annually by the State Energy Research Center on all research activities and accomplishments. (Energy Development and Transmission Committee)



<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
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 Natural Resources 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 Teachers' Fund for Retirement Board of Trustees 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)
15-54.1-02	The State Board of Higher Education shall report biennially to the Legislative Management and to the Appropriations Committees of the Legislative Assembly on the use of funding in the university system capital building fund, the source of matching funds, and each institution's 5-year plan for capital construction spending. (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)
15.1-02-04(9)	Receive an annual report from the Kindergarten Through Grade Twelve Education Coordination Council on the activities of the council. (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 Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports. (Education Funding 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 waiver 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 rule; and a review of evaluation date results. (Education Policy Committee)
15.1-07-25.4	The Superintendent of Public Instruction shall provide biennial reports to the Legislative Management regarding the academic performance metrics of students participating in virtual instruction under this section. (Education Policy Committee)
15.1-07-35	Receive biennial reports from the Superintendent of Public Instruction regarding proposals to allow students enrolled in grades six through twelve to earn course credit through educational opportunities with a sponsoring entity. (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)
15.1-21-12.1	The Superintendent of Public Instruction shall provide periodic reports to the Legislative Management on the implementation and effectiveness of this section in improving educational outcomes and reading competency of students. (Education Policy Committee)
15.1-32-26(5)	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)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
17-05-13	Receive written report from the North Dakota Transmission Authority each biennium. (Energy Development and Transmission Committee)
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)
19-03.1-36.8	By November 1 of each year, the Attorney General shall submit to the Legislative Management and the Governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received. Summary data and civilly forfeited property must be disaggregated by agency. The Attorney General shall make the report available on the Attorney General's website. The report must include the case reports provided by the law enforcement agencies. (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, registered compassion center agents, nature or debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassion centers, expenses incurred and revenues generated by the department, and data for statistical purposes in a manner so that an individual person is not identifiable. (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)
23-51-08	Receive an annual report from the Maternal Mortality Review Committee regarding the identification of patterns, trends, and policy issues related to maternal mortality. (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)
27-02.2-13	Before July 1 of each year, the Supreme Court shall submit a report on the status of the program to assist rural counties and municipalities in recruiting attorneys to the Legislative Management. (Judiciary 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 on the status, effectiveness, performance, and sustainability of a memorandum of understanding. (Judiciary Committee)
28-32-07	Approve extension of time for administrative agencies to adopt rules. (Administrative Rules Committee)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
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)
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 Natural Resources 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)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts. (Legislative Audit and Fiscal Review Committee)
50-06-05.1	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)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
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)
50-24.1-37	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)
50-35-02	The Department of Human Services shall report to the Legislative Management the process developed for allowing a human service zone to opt in to state employment. The transition to state employment is contingent on the approval from the Legislative Assembly. (Human Services Committee)
50-35-02	Before August 1, 2022, the Department of Human Services shall report to the Legislative Management the process developed to calculate payment for indirect costs. (Human Services Committee)
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(1)	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)
54-03-28(4)	Adopt a procedure for identifying measures and proposed measures mandating health insurance coverage of services or payments for specified providers of services. (Employee Benefits Programs 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. Upon recommendation from the Legislative Management, the Attorney General shall review the executive order 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)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
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)
54-10-01	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)
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)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
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)
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)
54-35-02.10	Each biennium, the Legislative Audit and Fiscal Review Committee, in consultation with the State Auditor, shall review updates to government auditing standards and develop guidelines for the contents of state agency audit reports. The Legislative Audit and Fiscal Review Committee when developing guidelines shall consider applicable auditing standards, sound financial practices, compliance with laws and legislative intent, data analyses, and the opportunity to improve the efficient and effective operations of state agencies. (Legislative Audit and Fiscal Review Committee)
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)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
54-35-15.2	Receive and review information 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)
54-35-23	Study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. (Tribal and State Relations Committee)
54-35-26	Study economic development tax incentives as provided in Section 54-35-26. (Taxation Committee)
54-35-27(1)(a)	By July 1, 2022, each state agency that is authorized to impose fewer than 40 fees shall submit a report to the Legislative Management, including the amount of each fee, when the fee was implemented, why the fee is set at the specific dollar amount, where the fee is deposited, and whether the fee is critical for the budget of the agency. (Government Finance Committee)
54-35-27(1)(b)	By July 1, 2024, each state agency that is authorized to impose more than 40 fees shall submit a report to the Legislative Management including the amount of each fee, when the fee was implemented, why the fee is set at the specific dollar amount, where the fee is deposited, and whether the fee is critical for the budget of the agency. (Government Finance Committee)
54-35-27(1)(c)	By September 1 in the year agency fee reports are received, the Office of Management and Budget shall compile all of the reports into a single report and provide the report to the Legislative Management. (Government Finance Committee)
54-35-27(8)	By July first of each even-numbered year, each agency that has fees shall provide a report to the legislative management indicating whether any fees were added, deleted, or changed during the course of the biennium. (Government Finance Committee)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority. (Government Administration Committee)
54-44-04	The Office of Management and Budget shall prepare and submit a quarterly report to the Legislative Management of each executive branch agency that gives any full-time state employee salary increases between April 1, 2021, and June 30, 2023, which cumulatively are 15 percent or more over the employee's base salary as of March 31, 2021. The report must include the name of each employee receiving the increase and any relevant salary information. (Government Finance)
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. (Government Finance)
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)

<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
54-57-09(3)	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)
54-59.1-07	The Information Technology Department shall report to the Legislative Management all disclosed cybersecurity incidents as required by this chapter, including the status of the cybersecurity incident and any response or remediation to mitigate the cybersecurity incident. (Information Technology 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)
54-60-03	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. (Government Finance 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. (Government Finance 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)
54-63.1-04	Each biennium, the Clean Sustainable Energy Authority shall provide a written report to the Legislative Management regarding its activities and the program's financial impact on state revenues and the state's economy. (Energy Development and Transmission Committee)
55-08-07.2	Approve any donation from funds the donor has not designated or conditioned the use of for a specific purpose to the state parks gift fund in excess of \$50,000. (Budget Section)
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)
57-51.2-02	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)
57-51.2-04	Receive report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation. (Tribal and State Relations Committee)
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)



<b>NDCC Citation</b>	<b>Subject Matter (Committee)</b>
61-02-14.4	The State Water Commission shall report quarterly to a legislative committee designated by the Legislative Management each project the State Water Commission has designated as a carryover project that has had a cost-share agreement in place for at least 4 years, the amount of funds still committed for each carryover project included in the report, the total amount of funds reallocated or made available from carryover projects included in a previous report to other projects since the commission's preceding report, and the status of each carryover project for which the committee has made a recommendation to terminate since the commission's preceding report. The committee may make a recommendation to the State Water Commission that a carryover project included in a report be terminated under Section 61-02-14.3 and any funds remaining for the carryover project be reallocated and made available for projects with the same general purpose as the carryover project. (Water Topics Overview Committee)
65-01-19	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>2019 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 12 § 10	Receive a report from the Department of Transportation regarding its study of public transportation services within the state. (Agriculture and Natural Resources Committee)
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	Receive quarterly progress reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project. (Water Topics Overview 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 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 452 § 1	Receive reports from the Department of Transportation, as requested, on the road train pilot program. (Agriculture and Natural Resources Committee)
<b>2021 Session Laws Citation</b>	<b>Subject Matter (Committee)</b>
Chapter 1 § 3	Authorize the Governor's office expend other funds if the amount of funds received from a source exceeds \$150,000 under North Dakota Century Code Chapter 54-16. Federal funds which may become available to the Governor's office may be accepted by the Governor's office. Federal funds accepted by the Governor's office may not be spent until authorization is received from the Legislative Assembly or from the Emergency Commission and Budget Section under Chapter 54-16. (Budget Section)

Chapter 4 § 6	The State Auditor shall provide reports to the Legislative Management regarding contracts to conduct prescription drug coverage performance audits, performance audit results, and audit reports issued. (Legislative Audit and Fiscal Review Committee)
Chapter 12 § 8	Receive a report after June 30, 2022, from the Department of Human Services on any transfer made in excess of \$50,000 and to the Appropriations Committees of the 68 <sup>th</sup> Legislative Assembly regarding any transfers made pursuant to this section. (Budget Section)
Chapter 12 § 20	During the 2021-22 interim, the Department of Human Services shall provide a report to the Legislative Management regarding refugee resettlement services. (Human Services Committee)
Chapter 12 § 59	Before October 1, 2022, the Department of Human Services shall provide a report of the early and periodic screening, diagnostic, and treatment program study to the Legislative Management. (Human Services Committee)
Chapter 12 § 60	Before October 1, 2022, the Department of Human Services shall present a report to the Legislative Management regarding payment methodology revisions for basic care facilities. (Human Services Committee)
Chapter 12 § 61	During the 2021-22 interim, the Department of Human Services shall provide reports to the Legislative Management regarding the status of 4-year old program approvals, the North Dakota Early Childhood Council, and the early childhood grant for best in class 4-year old experiences. (Human Services Committee)
Chapter 12 § 62	Receive quarterly reports during the 2021-22 interim from the Department of Human Services Behavioral Health Division on the status of the substance use disorder treatment voucher system program, including data on the utilization of the program, data on program expenditures, and an estimate of the number of months of funding remaining in the program. (Budget Section)
Chapter 13 § 24	An aggregated report of school districts receiving funds from the elementary and secondary school emergency relief must be presented by the Superintendent of Public Instruction to the Legislative Management by June 1, 2022. The second school district report must be submitted to the Superintendent of Public Instruction by December 1, 2022. An aggregated report must be presented by the Superintendent of Public Instruction to the 68 <sup>th</sup> Legislative Assembly. (Education Funding Committee)
Chapter 15 § 13	Receive quarterly reports from the Department of Transportation regarding the use of funds transferred from the general fund to the highway fund. (Budget Section)
Chapter 16 § 16	Receive a report during the 2021-22 interim from the Adjutant General regarding any land purchased for the expansion of Camp Grafton. (Government Administration Committee)
Chapter 20 § 3	Approve State Water Commission expenditure of funds that become available in the resources trust fund in excess of 2021-23 biennium appropriations. (Budget Section)
Chapter 20 § 9	The State Water Commission shall report to the Legislative Management on the results of the basinwide water plan pilot project no later than August 1, 2022. (Water Topics Overview Committee)
Chapter 31 § 22	Notwithstanding Section 54-16-04, the Office of Management and Budget shall transfer appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of Section 1 of Senate Bill No. 2003 as requested by the State Board of Higher Education for the biennium beginning July 1, 2021, and ending June 30, 2023. The board shall report any transfer of funds under this section to the Legislative Management. (Higher Education Committee)
Chapter 41 § 5	During the 2021-22 interim, the Commissioner of University and School Lands shall provide at least one report to the Information Technology Committee regarding the status of the information technology project. (Information Technology Committee)
Chapter 42 § 14	During the 2021-22 interim, the Energy and Environmental Research Center shall provide quarterly reports to the Industrial Commission and at least one report to the Legislative Management regarding the results and recommendations of the underground energy storage study (Energy Development and Transmission Committee)
Chapter 42 § 15	During the 2021-22 interim, the Energy and Environmental Research Center shall provide at least one report to the Legislative Management regarding the study on development and implementation of hydrogen energy in the state. (Energy Development and Transmission Committee)
Chapter 42 § 36	During the 2021-22 interim, the Bank of North Dakota shall provide at least one report to the Legislative Management regarding the status of the infrastructure revolving loan fund under Section 6-09-49, the legacy infrastructure loan fund under Section 6-09-49.1, and the water infrastructure revolving loan fund under Section 16 of Senate Bill No. 2014. The report must include information regarding the types of projects funded with the loans, outstanding loans, and new loans issued, and the report must identify outstanding loans and new loans by communities with a population of less than 5,000 and by communities with a population of at least 5,000. (Government Finance Committee)
Chapter 48 § 8	Receive a report from the State Board of Higher Education on any adjustments or increases of full-time equivalent positions. (Budget Section)

- Chapter 48 § 11 During the 2021-22 interim, the Director of the NDSU Main Research Center shall report to the Legislative Management regarding priority capital projects and other expenses that may be eligible for funding from the state fiscal recovery fund allocated to the state under the federal American Rescue Plan Act of 2021. (Budget Section)
- Chapter 49 § 10 During the 2021-22 interim, the Information Technology Department shall report annually to the Legislative Management regarding any efficiencies gained and cost-savings realized as a result of the 2021-23 biennium information technology unification initiative. (Information Technology Committee)
- Chapter 52 § 7 By September 1, 2022, receive a report from the Department of Environmental Quality regarding carbon reduction initiatives, rules, or policies that will affect North Dakota residents and industries and the Department of Environmental Quality shall consider, review, and report, as appropriate, technologies, operational practices, and conservation opportunities directed at reducing the state's carbon intensity. (Energy Development and Transmission Committee)
- Chapter 55 § 1 Receive certification from the Director of Office of Management and Budget that the appropriation for the intermodal facility construction grant program complies with federal guidelines for the federal Coronavirus Capital Projects Fund. (Budget Section)
- Chapter 141 § 15 During the 2021-22 interim, the Kindergarten Through Grade Twelve Education Coordination Council shall study the membership, duties, and term limits of the council. Before June 1, 2022, the Kindergarten Through Grade Twelve Education Coordination Council shall report the findings and recommendations of the study, including any proposed legislation necessary to implement the recommendations, to the Legislative Management. (Education Policy Committee)
- Chapter 148 § 10 The Superintendent of Public Instruction shall report the findings and recommendations of the study of interim education assessment systems, including with any proposed legislation necessary to implement the recommendations, to the Legislative Management. (Education Policy Committee)
- Chapter 189 § 2 Receive a report from the Department of Commerce regarding its findings and recommendations of its study of environmental social governance as it pertains to a set of nonspecific, quantifiable, and nonquantifiable criteria with attributing factors used for making determinations, decisions, or investments as it pertains to government and private industry in the state. (Government Finance Committee)
- Chapter 208 § 3 Before November 1, 2022, the Onsite Wastewater Recycling Technical Committee shall submit a report to the Legislative Management on the status of the statewide technical guide and the committee's recommendations. (Water Topics Overview Committee)
- Chapter 215 § 1 Before August 1, 2022, the Department of Transportation shall report its findings and recommendations of its study on pilot projects on the feasibility and impact of long combination vehicle operations on North Dakota roadways, together with any legislation required to implement the recommendations, to the Legislative Management. (Agriculture and Natural Resources Committee)
- Chapter 226 § 1 Receive a report from the Insurance Commissioner regarding the availability, cost, and risks associated with insurance coverage in the lignite coal industry. The study must include consideration of whether the current insurance market adequately or appropriately calculates the risk factors specifically connected to the coal industry and whether there is a need for a state-based insurance product that insures against current risk factors at an appropriate cost. (Energy Development and Transmission Committee)
- Chapter 245 § 46 During the 2021-22 interim, the Commission on Legal Counsel for Indigents shall report to the Legislative Management by July 1, 2022, regarding actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to indigent juveniles; actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to nonindigent juveniles; and any amounts collected from those financially able to pay all or part of the cost of providing legal counsel and related services for juveniles. (Judiciary Committee)
- Chapter 352 § 511 During the 2021-22 interim, the State Health Officer and the Executive Director of the Department of Human Services, and then the Executive Director of the Department of Health and Human Services, shall provide periodic reports to the Legislative Management regarding the status of the merger of the State Department of Health into the Department of Human Services. The reports must include information regarding any agency structural changes identified, any efficiencies identified with the merger, and whether legislation is required to implement identified structural changes or efficiencies. (Human Services Committee)
- Chapter 354 § 1 Before July 1, 2022, the Department of Human Services shall make a report to the Legislative Management regarding the department's quality strategy, including quality data, verification the department shared the report with stakeholders, such as the State Department of Health and North Dakota Health Information Network, and recommendations for improvement. (Human Services Committee)
- Chapter 408 § 2 By July 1 of each even-numbered year, each agency that has fees shall provide a report to the Legislative Management indicating whether any fees were added, deleted, or changed during the course of the biennium. (Government Finance Committee)
- Chapter 493 § 10 The Northwest Area Water Supply Advisory Committee shall provide a report to the Legislative Management regarding recommendations for transition of the long-term operation and management of the Northwest Area Water Supply Project. (Water Topics Overview Committee)

Chapter 493 § 11	The Northwest Area Water Supply Advisory Committee shall provide a report to an interim committee designated by the Legislative Management regarding the status of the advisory committee's responsibilities. (Water Topics Overview Committee)
Chapter 535	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.

Responsibility	Interim Committee
Study the provisions of Senate Bill No. 2290 to determine the appropriateness of the bill's requirement for the Legislative Assembly to approve any Emergency Commission requests to expend funds after the aggregate amount of federal fund requests approved by the commission in a biennium has exceeded \$50 million and after the aggregate amount of other funds requests approved by the commission in a biennium has exceeded \$5 million. (Legislative Management Chairman directive)	Government Finance Committee
Study and propose amendments to Chapters 61-16.1, 61-21, and 61-32 to eliminate redundancy and conflicts and to provide for uniform assessment procedures for all water projects; study and recommend procedures to appeal water resource board decisions; study the structural relationship between the State Water Commission and water resource boards and identify methods for improving water resource board accountability; and study methods, including the use of an independent organization, for assessing the cost of a project in relation to the benefits received and recommend a method to ensure the cost to a landowner does not exceed the benefit to the landowner. (Legislative Management directive)	Water Drainage 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 § 25	Study the feasibility and desirability of consolidating litigation-related funding in state government. The study must include an analysis of litigation-related funding in state government agency budgets, including the purpose and source of funding for the litigation and any efficiencies that may be gained through the consolidation of the litigation funding into the Attorney General's office. The study must include consultation with the Attorney General and any agency with litigation-related funding appropriated for the 2021-23 biennium.
1003 § 26	Study laws regarding the state's charitable gaming taxation and use of net proceeds for eligible organizations.
1010 § 9	Study fire-related lines of insurance, including the insurance premium tax revenue generated from fire-related lines of insurance and the appropriate amounts to be distributed to fire departments and the North Dakota Firefighter's Association pursuant to Section 18-04-05.
1013 § 23	Study the feasibility and desirability of using up to 1 percent of common schools trust fund assets annually for school construction grants.
1018 § 8	Study the feasibility and desirability of creating local advisory boards to the State Historical Society.
1019 § 14	Study the effectiveness of the parks matching grant program created in Section 7 of House Bill No. 1019 and the feasibility and desirability of creating a parks and recreation foundation.

<b>Bill or Resolution No.</b>	<b>Subject Matter</b>
1023 § 3	Study the feasibility and desirability of expanding fertility benefits under the Public Employees Retirement System uniform group insurance health benefits as a precursor under Section 54-03-28 to mandating the fertility benefits for health insurance in the private market. The study must include a Public Employees Retirement System actuarial study of the cost of expanding the fertility benefits of the state health plan and must include consideration of the positive and negative aspects of mandating fertility benefits for health insurance in the private market.
1027 § 7	Study the impact of additional career and technical education center student transportation on student transportation costs.
1031 § 2	Study the creation of a general fee policy relating to how state agencies' fees should be established for new programs and a continued review of existing fees.
1210 § 1	Study the feasibility and desirability of creating a teacher reimbursement program. The study must include a review of out-of-pocket expenses incurred by K-12 teachers on classroom school supplies, including the total amount of annual out-of-pocket expenses teachers in the state incur on classroom school supplies; a review of school districts in the state that have implemented teacher reimbursement programs; and an evaluation of whether a teacher reimbursement program would mitigate the financial burden incurred by teachers purchasing school supplies for their classrooms, and the total potential annual cost to the state to reimburse teachers for the out-of-pocket expenses.
1231 § 1	Study the benefits of investing legacy fund moneys locally before investing any moneys outside the state.
1249 § 1	Study the building space needs of the legislative branch for purposes of considering whether an expansion or renovation of the space available to the legislative branch is necessary to serve the public and meet the needs of the legislative branch. The study must include consideration of whether adequately sized committee rooms, appropriate accommodations under the federal Americans with Disabilities Act, and flexible meeting areas are available, and will continue to be available, to the legislative branch, and the impact on the space needs from a potential expansion of the information technology division of the Legislative Council. The Legislative Management may consult with third-party consultants for this study.
1339 § 1	Study the definitions of "dangerous weapon" and "public gathering." The study must consider which weapons should be considered dangerous weapons. The study also must consider whether a "public gathering" includes athletic or sporting events, school buildings, or churches.
1375 § 4	Study all scholarship programs in the state.
1459 § 1	Study the development of a licensing system that would authorize county correctional employees to carry a firearm while transporting inmates. The study must include input from the North Dakota Sheriffs and Deputies Association, state jail administrators, the North Dakota Peace Officer Standards and Training Board, the Department of Corrections and Rehabilitation, and all other interested parties.
2003 § 26	Study higher education funding mechanisms, including private-public partnerships and distributions from permanent funds. The study must include potential mechanisms to stabilize funding for higher education, including funding mechanisms used in other states.
2004 § 15	Study the roles of the State Health Officer, Health Council, Medical Advisory Board, and Governor as they relate to the administration of the State Department of Health. The study must include consideration of the role of the Health Council if the Governor seeks to terminate the appointment of the State Health Officer or to adjust the salary of or take punitive action against the State Health Officer. Additionally, the study must include whether the orders of the State Health Officer regarding public health directives have primacy over orders issued by the Governor.
2014 § 35	Study the levels of debt associated with long-term care facilities in the state. The study must include consideration of the current debt of long-term care facilities and the potential debt that may be incurred in the next 10 years by long-term care facilities; the status of existing loan programs to assist long-term care facilities, including Bank of North Dakota loan programs and the United States Department of Agriculture rural loan program; and any potential cost-savings for the state and private payers resulting from lower interest rates associated with loans to long-term care facilities.
2015 § 6	Study the use of land owned by the Department of Corrections and Rehabilitation, including the potential to sell land owned by the department to finance the construction of new correctional facilities.
2018 § 20	Study data storage by state entities. The study must include input from the Information Technology Department, North Dakota University System, and Kindergarten Through Grade Twelve Education Coordination Council. The study must consider data security, geographical locations of storage, geographical locations of corporate contractors, state and federal laws that may affect North Dakota data, ownership and control of data storage, and current and estimated data storage costs related to cloud-based, out-of-state data storage of North Dakota state and local government data.
2021 § 12	Study the feasibility and desirability of the legislative branch and judicial branch receiving strategic planning and operational information technology direction from the Information Technology Department beginning in the 2023-25 biennium.

<b>Bill or Resolution No.</b>	<b>Subject Matter</b>
2021 § 16	Study competitive fairness, economic development implications, and other economic and societal impacts of large technology companies conducting business in North Dakota.
2021 § 17	Study the feasibility and desirability of regulating special purpose depository institutions and regulating other entities engaged in virtual currency business activities.
2041 § 2	Study the provision of a property tax exemption for elevators, warehouses, and other farm structures classified as commercial property, which are privately owned and used to store agricultural products produced by the owner or an individual related to the owner as defined in Section 10-06.1-12. The study must include consideration of the definition of agricultural property and the impact of an exemption on city and county property tax revenues.
2075 § 2	Consider, with the assistance of the Insurance Department, studying the North Dakota laws and practice of insurers making property and casualty insurance policies and related information available to insureds by electronic means; the feasibility and desirability of prohibiting insurers from restricting the conditions in which insureds may access such information, including through software and agents of their choosing; and the extent to which insurers conducting business in this state have sought to limit access to policies and related information made available to insureds, whether such restrictions restrain competition in the marketplace, balance with an analysis of the impact of such access on potential cyber breaches, and loss of trade secret or proprietary information resulting from third-party usage and software applications, and how the two competing considerations can be safely and fairly reconciled.
2078 § 8	Study the process for obtaining written consent under the provisions of the Violent Crime Control and Law Enforcement Act of 1994 codified at 18 U.S.C. Section 1033 [Pub. L. 103-322] for individuals otherwise excluded from licensure as insurance producers.
2089 § 4	Study the autism spectrum disorder waiver and voucher programs and other programs designed to provide services to children who are impacted by autism spectrum disorder and the elimination of the Autism Spectrum Disorder Task Force. The study may include consideration of the structure of the programs and whether there are any gaps and unmet needs, including contracting with a private, nonprofit entity that does not provide autism spectrum disorder services to facilitate and provide support services to the Autism Spectrum Disorder Task Force.
2151 § 1	Consider studying the use of blockchain to identify an accurate and continuous count of uninsured drivers in this state. The study must be in consultation with the Department of Transportation and must consider blockchain technology that allows for a dynamic, ongoing, decentralized, secure, and immutable method of tracking uninsured drivers in this state. In addition, the study must include an analysis of the impact relating to consumer fraud that may result from a state law mandating uninsured motorist property damage coverage. The Insurance Department shall request the 30 largest auto insurers, as measured by premiums written, to provide information to facilitate the study of the use and implementation of blockchain for this purpose
2189 § 1	Study reduced harm nicotine products. The study must include a review of "modified risk tobacco products," as defined in Section 387(k) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 387(k)], and a review of products that should be deemed reduced harm nicotine products based on the product's potential for reducing tobacco-related diseases and the product's benefit to the population as a whole, including benefits to both current and potential tobacco users. The study also must evaluate how a reduction in the tax rate on reduced harm nicotine products might benefit public health by encouraging the use of reduced harm nicotine products, rather than the use of other products that potentially are more harmful.
2208 § 1	Consider studying the regulation of water in the state, including eliminating redundancy and conflicts in Chapters 61-16.1, 61-21, and 61-32; making assessment procedures uniform across all types of water projects, including drain projects; revising procedures for appeals from water resource board decisions, including the possible creation of an appeals board or appealing the decisions to an existing entity, such as the North Dakota Mediation Service within the Department of Agriculture; managing water on the basis of watersheds or water basins throughout the state; reviewing responsibility for culvert sizing decisions; applying cost-benefit analyses to additional projects before the State Water Commission considers whether to approve the projects; reviewing the cost-share for additional assessment drains across the state; reviewing the cost-share for and regulation of snagging and clearing; reviewing the structural relationship between the State Water Commission and water resource districts; the process for awarding irrigation permits; the length of time irrigation permit applications are held in abeyance; prioritization of irrigation permit applications; methods for maximizing water resources; possible development of an irrigation permit that may be suspended during periods of water scarcity; methods for on-time monitoring of well water levels; improving communication between the office of State Engineer and irrigation permit applicants; and related issues.

<b>Bill or Resolution No.</b>	<b>Subject Matter</b>
2253 § 1	Study the long-term care insurance market in the state. The Insurance Commissioner and, as requested, the 10 largest long-term care insurance insurers in the state shall participate in this study to review the current premium market, benefits, and consumer options in relation to premium increases and overall market. Additionally, the Department of Human Services and Insurance Department shall report to the Legislative Management regarding the long-term care partnership program, including data addressing utilization of the program, whether there are barriers to access to the program, and how utilization of the program might be increased.
2271 § 2	Study how to defeat the effort of the national popular vote interstate compact to ensure the electoral college process is preserved as prescribed in the United States Constitution. The study also must include examination of how states report presidential election results and whether states report the results using vote percentages or vote totals.
2293 § 1	Study the legislative intent of the exceptions to the requirement of a statement of full consideration for deeds transferring title of certain types of transactions and property under Section 11-18-02.2(6).
3011	Study and researching the impact of substance abuse and neonatal withdrawal syndrome, including a focus on Fetal Alcohol Spectrum Disorders, including treatment, services available, potential prevention, and whether existing policies for children and adults are appropriate.
3046	Study the administrative rules process, including a review of any relevant statutes regarding administrative rules to determine if any statutes are unclear or ambiguous, the degree to which agencies are complying with the process, which state agencies are specifically exempt from the process, and if those state agencies should remain exempt.
4014	Study the apportionment of voting rights in relation to a voter's ability to approve or protest a tax increase, bond issuance, or the formation of an improvement district and whether the current manner of apportioning voting rights is equitable and appropriate.

# 2023 NORTH DAKOTA LEGISLATIVE MANAGEMENT BILL AND RESOLUTION SUMMARIES

## HOUSE

**House Bill No. 1026 - Behavioral Health and Acute Psychiatric Treatment.** This bill provides for a Legislative Management study regarding the implementation of behavioral health and acute psychiatric treatment recommendations from the 2018 Human Services Research Institute report and the 2022 Renee Schulte Consulting, LLC, report. (Acute Psychiatric Treatment Committee)

**House Bill No. 1027 - Community Behavioral Health Clinics.** This bill requires each Department of Health and Human Services (DHHS) human service center to begin the process of becoming certified community behavioral health clinics. (Acute Psychiatric Treatment Committee)

**House Bill No. 1028 - Community Health Worker Taskforce.** This bill establishes a community health worker taskforce to develop a data-driven plan for community health worker education and training, regulation, and medical assistance reimbursement. (Health Care Committee)

**House Bill No. 1029 - Community Health Worker Certification.** This bill provides for certification of community health workers and a Medicaid state plan amendment to provide for medical assistance reimbursement for community health worker services. (Health Care Committee)

**House Bill No. 1030 - Student Financial Aid Technical Corrections.** This bill continues the skilled workforce student loan repayment and scholarship programs, clarifies eligibility and the award amount for the dual-credit scholarship, clarifies eligibility for the scholars program, renames the Indian scholarship to the Native American scholarship, and provides for the North Dakota University System office to continue to administer the academic and career and technical education (CTE) scholarship program for current award recipients. (Higher Education Committee)

**House Bill No. 1031 - Student Financial Aid Funding.** This bill increases the annual needs-based student financial assistance grant award from \$2,200 to \$3,300 per year. The bill appropriates \$12 million to provide a total of \$35.9 million from the general fund for student financial assistance grants to support the increased award, appropriates \$1 million to provide a total of \$17.2 million from the general fund for academic and CTE scholarships to meet estimated program needs for the 2023-25 biennium, and appropriates \$1.5 million from the Bank of North Dakota to continue the dual-credit tuition scholarship program. (Higher Education Committee)

**House Bill No. 1032 - Certificate Program Student Financial Aid.** This bill provides an appropriation of \$1 million from the general fund to establish a \$500 scholarship for residents of the state enrolled in educational programs for commercial driver's license and certified nursing assistant certificates. (Higher Education Committee)

**House Bill No. 1033 - Higher Education Challenge Grant.** This bill provides an appropriation of \$24 million from the general fund for the higher education challenge grant program for the 2023-25 biennium, an increase from the \$11.15 million appropriated for the 2021-23 biennium. The bill expands the allowable uses of challenge grant funds to include endowed faculty and costs related to new or expanding educational programs. (Higher Education Committee)

**House Bill No. 1034 - Higher Education Capital Building Fund.** This bill provides for a transfer of \$29 million from the strategic investment and improvements fund to the higher education capital building fund. The bill reduces the Tier I matching requirements to \$1 to \$1 for the nine nonresearch University System institutions; restricts the use of Tier II and Tier III funding to extraordinary repairs and deferred maintenance projects for academic facilities, unless legislatively approved; and requires institutions to identify matching funds for future capital project requests submitted during the budget process. (Higher Education Committee)

**House Bill No. 1035 - Cross-Disability Advisory Council.** This bill creates a cross-disability advisory council to advise DHHS regarding the implementation, planning, and design of the cross-disability children's waiver and repeals the autism spectrum disorder task force. (Human Services Committee)

**House Bill No. 1036 - Temporary Assistance for Needy Families Benefit Level.** This bill establishes the temporary assistance for needy families program maximum basis standard of need benefit level to be at least 50 percent of the federal poverty level based on household size. (Human Services Committee)



**House Bill No.1037 - Spousal Support.** This bill draft codifies the factors the court must consider in determining the amount and duration of spousal support, sets forth the types of support the court may award, provides a standard for when spousal support terminates based on the length of the marriage, and creates a rebuttable presumption for termination of spousal support. (Judiciary Committee)

**House Bill No. 1038 - Technical Corrections.** This bill makes technical corrections throughout the Century Code. (Judiciary Committee)

**House Bill No. 1039 - Main System Defined Benefit Plan.** This bill closes the main system defined benefit plan to new hires beginning January 1, 2024, provides a one-time transfer of \$250 million from the general fund to the Public Employees Retirement System (PERS) fund to reduce the unfunded liability of the main system defined benefit plan, provides for an increase of funding from the legacy earnings fund from \$48 million to \$70 million per biennium, creates a defined contribution plan with 4 percent employee and 4.12 percent employer contribution rates and optional additional 3 percent employee and 3 percent employer matching contributions provided through the PERS 457 deferred compensation plan; and requires employer contribution rates for the defined benefit plan be based on the actuarially determined employer contribution rates, of which the state would be responsible for the state and political subdivision employer shares. (Retirement Committee)

**House Bill No. 1040 - Main System Defined Benefit Plan.** This bill closes the main system defined benefit plan to new hires beginning January 1, 2025, provides a one-time transfer of \$250 million from the general fund to PERS fund to reduce the unfunded liability of the main system defined benefit plan, provides for an increase of funding from the legacy earnings fund from \$48 million to \$70 million per biennium, creates a defined contribution plan with 4 percent employee and 4.12 percent employer contribution rates and optional additional 3 percent employee and 3 percent employer matching contributions provided through the PERS 457 deferred compensation plan; and requires employer contribution rates for the defined benefit plan be based on the actuarially determined employer contribution rates, of which the state would be responsible for the state and political subdivision employer shares. (Retirement Committee)

**House Concurrent Resolution No. 3001 - 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 68<sup>th</sup> Legislative Assembly through September 30, 2025. (Budget Section)

# SENATE

**Senate Bill No. 2026 - Unused Building Demolition.** This bill provides a one time contingent \$2 million appropriation from the general fund to DHHS to demolish unused buildings on the State Hospital campus during the 2023-25 biennium, including the milk barn, pig barn, and water treatment plant buildings. The appropriation may not be spent until the chapel, administrative building, employee building, and associated tunnels have been demolished pursuant to direction from the 2021 Legislative Assembly. (Acute Psychiatric Treatment Committee)

**Senate Bill No. 2027 - Advisory Committee on Sustainable Agriculture.** This bill repeals the Advisory Committee on Sustainable Agriculture. (Agriculture and Natural Resources Committee)

**Senate Bill No. 2028 - Interim Education Assessments.** This bill requires public school districts to administer annually two interim education assessments in mathematics and reading to students in kindergarten through grade 10 and use a state-provided interim assessment or an interim assessment from a state-approved list. (Education Policy Committee)

**Senate Bill No. 2029 - Emergency Commission and Budget Section Approval Limit.** This bill changes the Emergency Commission and Budget Section approval limits for accepting and disbursing federal funds and state special funds from specific dollar amounts to percentage limits based on the general fund budget. (Government Finance Committee)

**Senate Bill No. 2030 - Prescription Drug Costs.** This bill directs a study of value-based purchasing and directs DHHS to participate in current and future innovative rebate and other program options. (Health Care Committee)

**Senate Bill No. 2031 - Prescription Drug Reference Rate Pilot Program.** This bill establishes a prescription drug reference rate pilot program. (Health Care Committee)

**Senate Bill No. 2032 - Para-To-Teacher Financial Aid.** This bill provides an appropriation of \$3 million from the general fund to the Department of Public Instruction to provide grants to accredited institutions of higher education to assist paraprofessionals to become qualified teachers. (Higher Education Committee)

**Senate Bill No. 2033 - Teacher Shortage Loan Repayment.** This bill reinstates the teacher shortage loan forgiveness program under the Department of Public Instruction with no limit on the number of teachers from each school district who would be eligible and a maximum annual award of \$5,000 for 4 years. The bill provides an appropriation of \$3 million from the general fund for the program. (Higher Education Committee)

**Senate Bill No. 2034 - Children's Cabinet Membership.** This bill adjusts the legislative membership of the Children's Cabinet and adds the Executive Director of DHHS to the membership of the cabinet. (Human Services Committee)

**Senate Bill No. 2035 - Guardianship Services.** This bill includes a \$500,000 general fund appropriation to DHHS to increase funding for developmental disability guardianships and includes a \$500,000 general fund appropriation for the Office of Management and Budget to increase funding for indigent guardianship grants. (Human Services Committee)

**Senate Bill No. 2036 - Water Project Uniform Assessment Procedure.** This bill creates a uniform assessment procedure for all water projects by addressing conflicts and redundancies throughout Title 61. (Water Drainage Committee)

**Senate Bill No. 2037 - Assessment Project Cost-Benefit Analysis.** This bill incorporates the use of a cost-benefit analysis for assessment projects costing \$1 million dollars or more. (Water Drainage Committee)

**Senate Bill No. 2038 - Quadrennial Performance Evaluation.** This bill repeals the quadrennial performance evaluation of Workforce Safety and Insurance. (Workers' Compensation Review Committee)

**Senate Bill No. 2039 - Workforce Safety and Insurance Reports.** This bill removes the requirement that Workforce Safety and Insurance provide the Legislative Management with reports on current and completed pilot programs and compiled data relating to safety grants and removes the requirement that Workforce Safety and Insurance and Office of Administrative Hearings provide the Legislative Management with quarterly updates on the statistical information regarding results under the case processing standards and policies. (Workers' Compensation Review Committee)

**Senate Bill No. 2040 - Workers' Compensation Review Committee.** This bill repeals the Workers' Compensation Review Committee. (Workers' Compensation Review Committee)

**Senate Concurrent Resolution No. 4001 - Outdated Public Institution Terminology.** This resolution replaces outdated terminology related to the State Hospital and other public institutions included in Sections 12 and 13 of Article IX of the Constitution of North Dakota. (Acute Psychiatric Treatment Committee)